

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA,)

4 Plaintiff,)

5 v.)

6 PIROUZ SEDAGHATY, et al.,)

7 Defendants.)

No. 05-60008-2-HO

) November 23, 2010

) Eugene, Oregon

8
9 TRANSCRIPT OF SENTENCING PROCEEDINGS

10 BEFORE THE HONORABLE MICHAEL R. HOGAN

11 UNITED STATES DISTRICT COURT JUDGE

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1 (Tuesday, November 23, 2010; 8:28 a.m.)

2 P R O C E E D I N G S

3 THE CLERK: This is the time set for Criminal
4 Case 05-60008, *United States of America versus Pirouz*
5 *Sedaghaty*, time set for sentencing.

6 THE COURT: Thank you. Is our witness on the
7 phone?

8 (Discussion held off the record with the
9 clerk.)

10 MR. CARDANI: Good morning, Judge.

11 THE COURT: Good morning.

12 MR. CARDANI: I don't know what the present
13 status is of our attempt to hook up with Moscow, but
14 people in Moscow are ready to go. Once that hookup is
15 made, we're prepared to call Sergei Ignatchenko from
16 Moscow. Until that hookup is made, we're also prepared
17 to go forward with posttrial motions. And if we can't
18 make that hookup right now, perhaps it would be good
19 to --

20 THE COURT: I'm told we don't have the video
21 hookup with Moscow yet.

22 MR. CARDANI: We do not?

23 THE COURT: Do not.

24 MR. CARDANI: Okay. What I have on my list of
25 items to get through today is the Moscow testimony. We

1 have one other witness who is on his way into the
2 courtroom from the IRS to support the tax loss figures.
3 Those are the only two witnesses we anticipate at this
4 point calling today. We do have posttrial motions to
5 get through, and obviously assorted sentencing issues,
6 and repayment of legal fees.

7 Does the court wish to go to the posttrial
8 motions?

9 THE COURT: Yes.

10 MR. CARDANI: Mister -- the defense has filed a
11 motion for judgment of acquittal and a motion for a new
12 trial. Most of the government's response is in the
13 papers, and we don't have a response unless the court
14 has questions.

15 The motion for judgment of acquittal raises a
16 legal issue, and that was whether the donation that came
17 over from Egypt through London was earmarked to be
18 reported on the Form 990. The government's motion is
19 that there were lengthy facts before the jury to entitle
20 them to reject that defense and convict him on the tax
21 count. We don't have any other argument or anything
22 else on that unless the court has any questions on the
23 motion for judgment of acquittal.

24 On the motion for the new trial, there are, by
25 my count, 20 issues raised on the motion for new trial.

1 We'll stand on our briefing on all of them except one
2 issue, and that has to do with the rebuttal argument,
3 and whether there was improprieties committed by
4 government counsel in rebuttal argument.

5 Mr. Gorder is going to handle that for the
6 government, and we'll ask the court to make findings on
7 that matter. And we're prepared to address all of the
8 other issues as well. And -- excuse me. And I think
9 that's all we have for the motions.

10 THE COURT: Thank you. Mr. Gorder.

11 MR. GORDER: Yes, Your Honor. On the issue of
12 the rebuttal argument, we feel very strongly about that.
13 Your Honor, you'll recall that one of the exhibits we
14 introduced during the trial was SW-23. It was an e-mail
15 from the codefendant al-But'he to the defendant
16 Sedaghaty on February 23, 2000, right about the time
17 that the Egyptian El-Fiki was sending his money to
18 Ashland.

19 Al-But'he e-mailed to Mr. Sedaghaty a
20 *Washington Post* article about government investigation
21 of terrorism. And apparently Mr. al-But'he highlighted,
22 somebody did, in red a paragraph in that article, which
23 I will paraphrase that "Islamic terrorists are
24 concealing the sources of their funds by using
25 charitable groups as fronts. Investigating those kinds

1 of charities is not easy and it can subject the
2 government to allegations of targeting religious or
3 ethnic groups."

4 Sadly, ten years later, that paragraph is still
5 true. We can't have a trial apparently where a
6 prosecutor can point out the obvious, pointing to
7 exhibits introduced into evidence is sending out a call
8 to violent jihad and anti-Semitic literature to violent
9 prisoners to rebut a claim that a defendant is a man of
10 peace and a spokesman for tolerance, without that
11 prosecutor being accused of making an appeal to
12 prejudice or the jury, who it appears in this case
13 conscientiously deliberated for over two days, being
14 accused of having rendered a verdict based on prejudice.

15 And what are these allegations based on?
16 Really nothing. Claims that certain people in the
17 audience were offended by Mr. Cardani's argument. If
18 that was a standard for what was a fair trial in this
19 country, few convictions could stand scrutiny. Because
20 it's way too easy to claim that a lawyer is appealing to
21 prejudice rather than commenting on the evidence and
22 responding to his adversary's comments.

23 You know, there were some other people who were
24 in the audience who might have said that when a defense
25 attorney said "I have fear in my heart for my country"

1 that he was appealing to prejudice, or when it was said
2 that after 9/11 the nation reacted with anger, he was
3 trying to inflame the jury. "I'm offended" by a
4 demonstrative chart used during the trial. "My expert
5 witnesses are two distinguished patriots." Imagine if
6 the government said that. Or that al-But he walked
7 around Ashland dressed like a Saudi, having a darker
8 skin and a bigger nose. It's way too easy to claim that
9 somebody's prejudiced. And, again, it's not what
10 somebody in the audience might have said or thought.
11 What's really important in this case, Your Honor, is
12 what you saw and observed during the trial, because
13 we're going to ask you to make findings in that regard,
14 and what you observed about Mr. Cardani's closing
15 argument and rebuttal argument and what you observed in
16 the way of the jury's reactions.

17 The *Bains* and *Knobbier* cases cited by the
18 defense are really off point because they involve the
19 explicit use by a prosecutor of racial or religious
20 stereotypes, like "expect violence from all Sikhs in
21 this situation." And the defense doesn't claim that
22 that's what happened. Their only real claim is that
23 Mr. Cardani threw the Qur'an around the courtroom. And
24 that's just not true. You were here. And I think that
25 we need a finding that nothing that Mr. Cardani did was

1 disrespectful at all to Islam, or, more importantly, was
2 intended to or did appeal to any kind of alleged jury
3 prejudice. Rather it was simply proper argument based
4 on the evidence that was admitted at trial. There was
5 no throwing of the Qur'an. I was sitting right here.
6 Mr. Cardani was right there. And the court was where
7 you are sitting today. And he picked up the Noble
8 Qur'an that had the appendix that was introduced into
9 evidence, the call to jihad, and showed it to the jury,
10 and then put it back on the table.

11 I would have thought if there was something
12 outrageous that occurred then, either the court would
13 have stopped it or the defense would have objected, but
14 it didn't happen because there was nothing outrageous
15 about it.

16 And the court was able to observe the jury in
17 this case. And this was not a jury of 12 angry men and
18 women. They deliberated, by my count, for 13 hours
19 before they delivered their verdict. And they returned
20 a special verdict that only unanimously found one of the
21 objects of the conspiracy. So certainly it was hardly
22 evidence of a rush to judgment by a jury looking to get
23 all Muslims. And for that reason, the motion for a new
24 trial should be denied.

25 But the other reason we're asking for these

1 findings is that I want it clear on the record that
2 Mr. Cardani did nothing wrong, so that if some
3 allegation is made of misconduct with the bar or with
4 the department, that the people that receive that
5 allegation will have the benefit of the court's finding
6 in that regard. Thank you.

7 THE COURT: Thank you. Mr. Wax.

8 MR. WAX: Good morning, Your Honor.

9 THE COURT: Let me just -- Christy, if we do
10 make the connection, please tell me, okay?

11 THE CLERK: Yes.

12 MR. WAX: The motion for a new trial attempts
13 to point out to the court that the proceedings in this
14 case were infected from beginning to end by improper
15 efforts to link Mr. Seda to Osama bin Laden, radical
16 Islam, and to call for his conviction based not on the
17 facts that existed with respect to him alone, but in a
18 broader context.

19 At the outset of the proceeding in the release
20 hearings, the government introduced an e-mail that it
21 had to know was not a genuine e-mail that in any manner
22 related to Osama bin Laden. Notwithstanding that, it
23 was introduced in evidence before the magistrate judge.

24 Mr. Matasar, who was handling the case at that
25 time, took that issue on. That, regrettably, set a tone

1 that carried through in the prosecution, sometimes
2 beneath the surface, sometimes swirling around. It
3 reached its regrettable flower not in the argument that
4 Mr. Gorder made, and I think it is critical for the
5 court to note that in reviewing the transcript of the
6 closing arguments, in Mr. Gorder's argument, he
7 discussed the call to jihad. In his argument, he talked
8 about the specifics of some of the things that were
9 introduced.

10 Our motion is not addressed to that. Our
11 motion with respect to the portion on which Mr. Gorder
12 is seeking findings is only addressed to the rebuttal,
13 which began with the phrase "the Qur'an is the
14 defendant," "the Qur'an is the defendant". My client
15 Pete Seda, of course, Your Honor, is the defendant. We
16 are not alleging and we do not believe the law requires
17 a finding on the motive of the prosecutor.

18 We attempted to make clear in the pleading and
19 I made clear in conversations that I had with the United
20 States Attorney Dwight Holton that the issue that we are
21 raising is not one that requires a finding of bad motive
22 or bad intent. That's not the law as we understand it.

23 The issue is the effect. And it's not just the
24 proven effect. It is, as is said in the cases that we
25 cited for the court, a potential. The Ninth Circuit's

1 language is it "may" have inflamed. It "might." That's
2 the legal standard. And we respectfully submit that to
3 say the Qur'an is the defendant has that potential.

4 In that same paragraph the reference was made
5 to this "junk," not the call to jihad. The word "junk"
6 is used while the Noble Qur'an is being held and waved
7 in the courtroom.

8 Now, we're all here. We all observed what we
9 observed. We know that the podium was set up perhaps
10 four or five feet from the table that is sitting in
11 front of the jury where it is right now, and Mr. Cardani
12 was either at or near the podium when he was saying that
13 and when he was done, whether he threw or tossed the
14 Qur'an, that's a semantic that I don't think has any
15 significance. The reality is the book left his hand and
16 landed square in the middle of that table that's right
17 in front of the jury.

18 The potential is an appeal to prejudice. The
19 context again, Your Honor, is critical. In arguing this
20 case, on a couple of occasions, the government injects
21 Osama bin Laden, injects al-Qaeda into this trial.
22 There is absolutely no evidence, hint, suggestion, or
23 reality to any connection between Pete Seda and Osama
24 bin Laden, between Pete Seda and al-Qaeda. That's
25 wrong. That's out of bounds. That shouldn't happen.

1 The morning that the jury is deliberating, in
2 terms of the national context, we come downstairs at the
3 hotel, *USA Today* is sitting there. And on the front
4 page of *USA Today* was the photograph of and a story
5 about the Florida preacher who was -- made the national
6 media for talking about burning the Qur'an. That's the
7 context. A juror, with whom we did not have any
8 contact, is sitting there in the dining room. That
9 newspaper is there in front of him. So in the minds of
10 the jurors is that sort of inflammatory information.

11 Now, as the court is aware, we have been
12 sensitive to the concerns that the government raised,
13 and did not file in the public forum the declarations of
14 two people who observed and described for the court what
15 they saw. But I would submit to the court that the
16 government's request that the documents be filed under
17 seal is strong evidence of its knowledge of the
18 potential inflammatory nature of what occurred in that
19 rebuttal argument. There is no reason for the
20 government to request that a description of fact be
21 sealed unless it knows that the potential effect on this
22 jury and on the public at large was inflammatory.

23 I pointed out in my pleading that I do not
24 believe that it is appropriate for the government to be
25 asking this court in this sentencing proceeding to

1 engage in any preemptive discussion of any issues that
2 may or may not arise of a professional nature. As I
3 said, our understanding of the law is that intent,
4 motive is not relevant. It could be, of course, if one
5 were in a position to say and was saying that an
6 individual is, for example, in other settings, a racist.
7 That is not a claim that we are making. We are making a
8 claim based on the law, the might, the may, the effect.

9 Calling the Qur'an junk, saying the Qur'an is
10 the defendant, waving it, and throwing it in front of
11 the jury, regrettably, is that. And in the rest of our
12 pleading, we set out the other issues that have arisen.

13 We do not believe that this court should engage
14 in the fact finding that the government is requesting.
15 That's not the issue before you.

16 In terms of the judgment of acquittal motion,
17 we think that we have articulated the legal issue. It
18 is, we believe, a matter of law, whether or not the
19 money was required to be reported at all. We believe
20 that the un rebutted evidence is from the former head of
21 the charitable tax section of the Internal Revenue
22 Service. He knows. He wrote the book. He was
23 responsible for the entire tax section dealing with
24 charities. He said it did not. As a matter of law,
25 that should end the matter.

1 And in addition to those, Your Honor, there are
2 several other legal issues, but I'll sit down unless
3 you'd like me to go forward with the other legal issues
4 that we perceived --

5 THE COURT: As long as we are waiting for the
6 hookup, the video hookup, you filed some other motions,
7 if you have something you wish to add to your written
8 materials, go ahead at this time.

9 MR. WAX: Well, I understand from Mr. Cardani
10 that our request to strike one of the tax exhibits as
11 something the government is prepared to do, we believe
12 that that needs to be stricken, you know, withdrawn from
13 the electronic record. It contains information that
14 should not be in the public domain. So we have that.
15 And I believe that there is agreement on that.

16 We filed a motion for discovery --

17 THE COURT: You raised that, but was it a
18 separate motion? I saw it in your briefing but --

19 MR. WAX: I don't believe I filed it as a
20 separate motion. I believe it was incorporated within
21 the other pleadings.

22 We have a separate motion for discovery. If
23 the hookup with Moscow ever occurs, we believe that we
24 are entitled to substantial information before we're
25 required to cross-examine him. We also include in our

1 pleadings a request to preclude his testimony entirely,
2 and make that request on a number of grounds, on
3 reliability, video hookup, and one or two others.

4 The one other issue, Your Honor, that --

5 THE COURT: Actually, you did have a separate
6 motion on the exhibit, I'm sorry.

7 MR. WAX: The one other issue with respect to
8 the new trial motion that I do want to mention involves
9 the juror misconduct issue. And that, of course, as
10 we've articulated in the proceedings relates to the
11 potential for prejudice for it excluded juror number one
12 when juror number one complimented a government witness,
13 which we think is evidence of the bias that was in the
14 jury.

15 The court did not authorize an inquiry into the
16 other allegations of misconduct. As you recall, the
17 government brought to our attention that one or more
18 jurors had also spoken to the government tech person,
19 Susan Cooke. And we believe that a hearing should be
20 ordered on that. We should get Ms. Cooke in. We should
21 get other government witnesses. And we should get the
22 jurors in to inquire into that.

23 The allegation was brought to the court's
24 attention by the government. And we do not see how the
25 matter can proceed without an inquiry into what

1 occurred.

2 One moment, please.

3 THE COURT: All right. We do have a connection
4 now, so we're going to proceed with the testimony.

5 MR. GORDER: Your Honor, before we do that, can
6 I just briefly respond to his rebuttal issue?

7 THE COURT: Yes.

8 MR. GORDER: Mr. Wax continues to take
9 Mr. Cardani's remarks out of context. He didn't say
10 that the defendant was the Qur'an. He was talking about
11 the Noble Qur'an that had been identified during the
12 trial as containing this appendix and that was the only
13 part that was introduced into evidence of a call to
14 jihad. And it's clear if you read the entire paragraph
15 that what he's talking about is the defendant sending
16 that call to jihad to prisoners around the country. So
17 he continues to take this out of context.

18 And I just want to make sure the court has also
19 received the declaration we filed under seal on this
20 issue also.

21 THE COURT: I have.

22 MR. GORDER: Okay. Thank you. Beyond that, we
23 are ready to go with the witness from Moscow.

24 THE COURT: Has our interpreter been sworn?

25 THE CLERK: No, not yet.

1 THE COURT: Let's do that, swear the
2 interpreter and the witness.

3 THE CLERK: Agent Carroll, is this one of your
4 agents that's on -- sitting next to the witness?

5 MR. CARROLL: No, that's not one of our
6 witnesses.

7 THE CLERK: Is it on your screen now? Mr. Wax,
8 are you able to see?

9 THE COURT: If one lawyer from each side wants
10 to look at the screens up here, we can bring it up just
11 to make sure you have the same thing we have, you may do
12 that. Why don't you come up and take a look now, if you
13 want to. Two gentlemen sitting at a table with papers
14 in front of them.

15 MR. CASEY: We have it now, Your Honor.

16 MR. WAX: I don't think it's on the big screen
17 yet.

18 MR. GORDER: And right now, Your Honor,
19 actually the witness is -- at least his face is blocked
20 on our screen. There we go.

21 THE CLERK: Mr. Papagni, can you see on the
22 large screen?

23 MR. PAPAGNI: Yes.

24 MR. WAX: Your Honor, Colonel Lang is in the
25 courthouse in the District of Columbia, and I'm

1 wondering if we can check to determine whether or not
2 he's able to be observing and hearing this as well.

3 THE CLERK: Colonel Lang, this is Christy from
4 the U.S. Courthouse in Eugene, Oregon. Can you hear me
5 okay?

6 COLONEL LANG: Yes, I can.

7 THE CLERK: Thank you. And the participants in
8 Russia, can you hear me?

9 INTERPRETER: Yes, they are.

10 THE CLERK: Please stand and raise your right
11 hand.

12 (The interpreter was sworn.)

13 (Proceedings translated with a Russian
14 interpreter.)

15 THE CLERK: Sir, please stand and raise your
16 right hand.

17 (The witness was sworn.)

18 THE CLERK: Thank you.

19 THE CLERK: Sir, are you able to hear us okay?

20 THE WITNESS: Yes, I hear you well.

21 THE CLERK: Thank you.

22 MR. GORDER: Your Honor, just for the record, I
23 understand that Vitaly Fedotov is the other gentleman
24 sitting next to him. He's another officer with the FSB
25 in Moscow.

1 THE CLERK: Could he please spell his name for
2 the record.

3 MR. FEDOTOV: V-I-T-A-L-Y, F-E-D-O-T-O-V.

4 THE COURT: You may proceed.

5 MR. GORDER: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. GORDER:

8 Q. Sir, could you tell us your name and what you
9 do for a living.

10 A. My name is Ignatchenko Sergei Nikolayevich. I
11 am an employee of the Federal Security Service.

12 Q. And that's of the Russian Federation?

13 A. Yes.

14 Q. Do you have a particular rank?

15 A. Colonel of the FSB of the Russian Federation.

16 Q. Were you working with the FSB in the 1990s and
17 early 2000 period?

18 A. Yes, I was working for the FSB at the end of
19 the '90s and at the beginning of the 2000.

20 Q. And what was your particular responsibilities
21 at that time?

22 A. At that time I was an operative. And I was
23 investigating the activities on the territory of the
24 Russian Federation of a number of charity organizations,
25 and one of them was the international charity

1 organization al-Haramain.

2 Q. And was that in the area of the Caucasus?

3 A. Yes, the organization was, and its activities
4 were, located in the territory nearing Caucasus and in
5 the Caucasus.

6 Q. And does that include Chechnya?

7 A. This organization has an illegal activity on
8 the Russian territory. And the territory it covered was
9 Chechnya, Ingushetiya, and Dagestan.

10 Q. Now, when you say it was illegal activity, what
11 do you mean?

12 A. They didn't follow the procedure of
13 registration in the territory of Russian Federation, so,
14 hence, their activity was illegal.

15 Q. Did you learn what the activities of
16 al-Haramain were in Chechnya and the Caucasus?

17 A. Yes. We got all sorts of data. This
18 organization was involved in financing terrorist
19 activity in the Caucasus. In particular, they were
20 financing terrorist groups in the territory of
21 Ingushetiya and Chechnya.

22 Q. And did they operate out of any particular area
23 near the Caucasus or in the Caucasus?

24 A. So the structure of the organization was pretty
25 intricate. They opened a number of branches. And some

1 of them were in Azerbaijan and in Georgia, Republic of
2 Georgia. To move finances from the Al-Barakah Bank,
3 they used Azerbaijan.

4 Q. Was that headquartered in Baku?

5 A. Yes, the branch office was in the city of Baku.
6 They also had the Kavkaz Institute on the territory of
7 Chechnya. And that institute, in fact, was the
8 international camp training terrorists.

9 Q. Can you describe the camp for us, where it was,
10 and --

11 A. The camp was located in the village --
12 actually, near the village of Serzhen-Yurt.

13 Q. And what occurred at that camp?

14 INTERPRETER: I didn't hear what he said.

15 A. It was close to the village of Serzhen-Yurt on
16 the left bank of the River Khulkhulau. There were seven
17 training camps inside that big camp. Up to -- the camp
18 accommodated up to 2000 people at a time who were
19 trained there. The people who attended that camp came
20 from different countries. The initial training started
21 with the general military training. And the follow-up
22 were that the students were distributed among different
23 camps where they get specialty training. For example,
24 the skills of sniper training, or the explosive
25 specialists, or diversion activity, or the murder for

1 hire.

2 Q. How long did the camp operate?

3 A. After graduation, the students returned to
4 their native countries. It is interesting to point out
5 that at the opening, when the camp was opened in 1997,
6 Ayman Zawahari was there on the day when the camp was
7 opened. I know that he's number two in the ranking of
8 the international terrorists that you have.

9 Q. That's al-Qaeda?

10 A. Yes. At that time he was the head of jihad
11 al-Islami.

12 MR. WAX: Your Honor, I'm going to object at
13 this point. This is going so far afield, it is
14 irrelevant to the issues. And it appears as though the
15 agent has documents in front of him that he's reading
16 from that we do not have. And before there is any
17 further testimony from him, we would need to have those
18 documents produced to us in English so that we can
19 evaluate what this is.

20 THE COURT: Response?

21 MR. GORDER: Your Honor, I can't be certain
22 what he has. They appear to be looking at a picture of
23 some kind.

24 MR. WAX: It's not just the pictures. It is
25 also the -- some the details that he has been reciting

1 from the papers that he appears to be reading while he's
2 testifying. Neither Mr. Teesdale nor I recall ever
3 having seen previously in any of the materials the
4 government provided to us.

5 THE COURT: Well, what we're going to do is
6 this: That's probably enough background. And I'm going
7 to allow the examination to go forward. If we need to
8 continue it some other date for some reason, we'll
9 consider that after this. All right?

10 MR. GORDER: Thank you, Your Honor.

11 MR. WAX: Your Honor, we would note that the TV
12 screen shows that the witness has now covered over some
13 documents, perhaps shutting a folder. To the extent
14 that this court has any jurisdiction, we would like an
15 order to this witness to preserve intact all the
16 material that is on the table in front of him.

17 MR. GORDER: Your Honor, we've given the
18 defense what we've received from the Russian government,
19 and I think that's sufficient at this point.

20 THE COURT: To the extent I have jurisdiction,
21 the witness is to retain the material. Thank you. Go
22 ahead.

23 THE WITNESS: I just wanted to stress, to point
24 out, that what I was saying is a known fact, it's an
25 open source, and it was in the media.

1 THE COURT: Go ahead.

2 THE WITNESS: Those were the photos of the
3 documents that he had at the time. And this was the
4 photocopies of his Sudanese passport.

5 For me the most important thing here was to
6 stress that al-Qaeda was taking an active part in
7 setting up this camp.

8 BY MR. GORDER:

9 Q. Can you tell us, how long did the camp operate?

10 A. 1997 to 2000.

11 Q. And how was it financed?

12 A. It was financed through Islamic Foundation.

13 Q. And did that include al-Haramain?

14 A. Yes, it does, sure. Actually, al-Haramain was
15 playing the major role in financing of this camp. At
16 that time the fund sent 25 operators in the border
17 regions of Chechnya, and they were sending ammo and
18 uniforms, sniper rifles, and a lot of other stuff.

19 Every field commander had a representative of
20 one of them. Each had a representative of al-Haramain
21 who financed that particular commander. Abd-al Latifbin
22 Dar'an was the representative from Saudi Arabia in the
23 camp of Makhachkala.

24 Q. Can I ask you to take a look at some exhibits
25 that we sent you. The first one is FSB Number 4. Could

1 you tell us what these are.

2 A. These vouchers confirming the receipt of funds.
3 So, for example, here there is the -- al-Haramain is
4 paying 100,000 U.S. dollars. And there is \$3,000 that
5 the Kavkaz Islami Center is paying. And this center was
6 located in --

7 MR. CASEY: Your Honor, if I may, excuse me,
8 please.

9 THE COURT: Just a moment, just a moment, sir.
10 Go ahead, Counsel.

11 MR. CASEY: Yes, thank you. The witness is
12 answering specific questions with specific detailed
13 answers. And he is reading. And I think we need a
14 foundation by asking him with respect to these specific
15 answers exactly what it is that he is reading from.

16 THE COURT: I think it was identified a few
17 moments ago.

18 MR. GORDER: I think he's looking at FSB 4.

19 THE COURT: That's what the question asked. Go
20 ahead.

21 MR. CASEY: I did not hear the FSB 4.

22 THE COURT: That was the question.

23 MR. CASEY: Thank you.

24 THE COURT: You may proceed.

25 BY MR. GORDER:

1 Q. Where were these vouchers obtained?

2 THE INTERPRETER: The tape is breaking up.

3 A. So we received it from our agent.

4 Q. Now I'd like you to take a look at Exhibit FSB

5 5. Could you tell us what this is.

6 A. This is the circuit of explosives. Those
7 diagrams were studied in detail at the Institute of
8 Kavkaz. And these were one of the learning materials.

9 Q. And does it appear to be a diagram of a
10 detonating device?

11 A. Yes, it is.

12 Q. And how about Government Exhibit FSB 6?

13 A. Yes. This is the dirty bomb diagram. All
14 these documents are coming from the archive of Abu-
15 Qutaybah and his computer. He is a citizen of the Saudi
16 Arabia. His real name is Jamil Jamal Akhmed
17 Abdurakhman.

18 Q. Before we get to him, I want to go back to FSB
19 6. You said this was the diagram of the dirty bomb.
20 What do you mean by that?

21 A. What I meant is that the terrorists were
22 planning how to create this sort of devices to later use
23 it in a terrorist act against civilians. We also have
24 some information saying that they were trying to create
25 chemical weapons, too. And also some devices using

1 poisons.

2 Q. Now, where was this particular document, FSB 6,
3 found?

4 A. This document was also found in the computer of
5 Abu Qutaybah.

6 Q. And who is Abu Qutaybah?

7 A. I created -- or my notes on him. He is the
8 mastermind of terrorists. I want to repeat and say once
9 again that he's a citizen of the Kingdom of Saudi
10 Arabia. And his real name is Jamil Jamal Akhmed
11 Abdurakhman. He was fighting in the so-called Kashmir
12 battalion in Bosnia prior to coming to Chechnya. He
13 lost his leg there. He was the number one after
14 Khattab, close associate. He was number four after
15 Khattab, Abu Walid, and Abu-Hafs.

16 THE INTERPRETER: I didn't hear what he said.

17 A. So they -- all of them -- all the above
18 mentioned people were the representatives of al-Qaeda in
19 Chechnya.

20 Q. And were they involved in the Kavkaz Institute?

21 A. Yes. Abu Qutaybah was teaching at the
22 institute. He was teaching the explosives and how to
23 make them.

24 Q. Now, could you identify for us FSB 7.

25 A. This was also found in the computer of Abu

1 Qutaybah. This is the form of martyrs and orphans. So
2 there was -- actually there was a form for every suicide
3 terrorist, which is called shahid or martyr. After the
4 act was committed, his family got assistance, financial
5 assistance. That's one of the forms for the terrorists
6 to propagate their activity.

7 Q. And where would the money come for the
8 financial assistance?

9 A. As I already mentioned, the major financial
10 bodies were different charity organizations. The major
11 one at that time was performed by al-Haramain.

12 Q. Now, if we could look at Exhibit FSB 8. Could
13 you identify that for us?

14 A. This is the chain of command in -- that's the
15 way the emirs, as they call themselves, in the group of
16 Khattab. After Khattab dies, Abu-Hafs became the major
17 emir. His first deputy was Abu-Qutaybah. The second
18 deputy was Abu-Rabi'ah. Number three was Abu-Jabir.
19 And then Abu-Jihad. Excuse me, number four is
20 Abu-Jabir. And number five is Abu-Jihad. And four
21 emissaries are essential at any time.

22 Q. And where was this document found?

23 A. So if one of the person is dead, then the next
24 goes up one step. For example, if Abu-Hafs is dead,
25 then the major emir becomes Abu-Qutaybah.

1 Q. Where was this document found?

2 A. This document was also taken from the computer
3 of Abu-Qutaybah.

4 Q. And how many of these other people besides
5 Abu-Qutaybah were involved in the Kavkaz Institute?

6 A. According to the data received, there were 40
7 instructors at the camp. For the major part, they were
8 of Arab nationality. But at the time there were
9 Pakistani instructors. There was also one from the
10 United States. His name is Asadulla (phonetic). And,
11 again, it's a nickname. That's not the real name, of
12 course.

13 Q. Okay. If you could look at Exhibits 9, 10, and
14 11. Could you tell us what they are.

15 A. Financial accounting that was done by
16 Abu-Qutaybah. Again, this one was taken from his
17 computer. Here you can clearly see that the money that
18 came his way he spent for different things. For
19 example, the making passports, purchasing ammo, and
20 uniforms and clothes, and also to finance terrorists and
21 their families.

22 Q. Now, could you tell us who Abu Umar Muhammad
23 al-Sayf was?

24 A. Abu Umar al-Sayf was one of the key figures in
25 the financing on that territory.

1 Q. Who did he work for?

2 A. We knew that he worked specifically for the
3 headquarters of Khattab.

4 Q. And what was his --

5 A. And he was very active.

6 THE INTERPRETER: Excuse me, you wanted to say
7 something?

8 BY MR. GORDER:

9 Q. What was his role at the Kavkaz Institute?

10 A. He was actively involved in the establishment
11 of the camp and in financing.

12 MR. CASEY: I'm sorry, Your Honor, I lost the
13 name of that person that he's speaking of right now.
14 Can you repeat that, please?

15 MR. GORDER: Abu Umar.

16 THE WITNESS: Abu Umar al-Sayf. Omar, O-M-A-R.
17 Abu Umar al-Sayf, A-L-S-A-Y-F.

18 MR. CASEY: Thank you.

19 BY MR. GORDER:

20 Q. How would he receive his money?

21 A. As I've already mentioned, we found out that
22 through the branch office that is located in the City of
23 Baku, the finances came through that channel. So then
24 the money was withdrawn from the bank account. And then
25 they used couriers to ship that money to Dagestan and

1 Chechnya.

2 Q. In the spring of -- in the spring of 2000, if
3 Abu Umar had received cash from al-Haramain, how would
4 it have been spent?

5 A. Spring of 2000? Specifically at that time
6 there were -- was war going on in the Caucasus. He
7 would definitely use it and will use his associates to
8 create camps. They would make the tent cities. And the
9 purchase of ammunition and weapons that would later be
10 delivered to Chechnya.

11 MR. WAX: Your Honor, excuse me, we'd like the
12 record to reflect that the other individual during the
13 last 30 to 45 seconds has been feeding information to
14 the witness. And we would like to ask that that
15 individual be removed from the room so that this witness
16 testifies independently of any information being fed to
17 him by this other person.

18 THE COURT: Go ahead and make a record on that,
19 please.

20 MR. GORDER: Your Honor, I would object to
21 that. I would just ask Mr. Fedotov if he could not
22 speak with the witness until after the testimony.

23 THE COURT: That is important. And also please
24 ask him -- please ask the witness what information was
25 given to him.

1 MR. GORDER: Sir, could you tell us what
2 information was given to you by Mr. Fedotov.

3 MR. WAX: He just did it again, Your Honor,
4 excuse me.

5 THE WITNESS: He brought up an interesting fact
6 that probably we were not very clear that the associates
7 of Abu-Qutaybah were operating on the territories of
8 Azerbaijan and Georgia. So Georgia was brought into the
9 picture.

10 THE COURT: Just a moment.

11 MR. CASEY: If I may, Your Honor.

12 THE COURT: Just a moment. Excuse me, sir.
13 Please instruct the witness not to take information from
14 his associate there during his testimony.

15 THE INTERPRETER: I already did. I will repeat
16 it again.

17 MR. CASEY: If I may, Your Honor, follow up on
18 that. I think it's -- a logical follow-up is to move to
19 strike the last series of questions and answers because
20 they were obviously fed to the witness by Mr. Fedotov.

21 THE COURT: The one statement that was
22 identified is stricken.

23 MR. CASEY: Thank you, Your Honor. One other
24 thing, Your Honor, I would ask at this point for
25 Mr. Fedotov to identify himself, number one; number two,

1 his position; number three, his role; and number four,
2 whether he understands English.

3 THE COURT: Denied. Please go ahead.

4 MR. GORDER: Thank you, Your Honor.

5 BY MR. GORDER:

6 Q. Sir, we were talking about the kinds of things
7 that Abu Umar could use money for in the spring of 2000.
8 Were there ever payments to commanders of their units?

9 A. Sure. In order to commit terrorist acts as
10 well as to assault federal troops, I can tell you that
11 every life costs money. For example, to kill a soldier
12 it would cost you just \$300. \$800 for an officer.

13 MR. CASEY: Objection, Your Honor, far afield.

14 THE COURT: Just a moment. Yeah, sustained.
15 Let's go on to something else.

16 BY MR. GORDER:

17 Q. Sir, could you tell us did you ever identify
18 someone named Mansour al-Qadi?

19 A. Mansour al-Qadi.

20 THE INTERPRETER: He repeats the name.

21 Don't remember, to tell you the truth.

22 BY MR. GORDER:

23 Q. Okay. Your Honor, he -- the witness has
24 produced a report, which is an exhibit to our sentencing
25 memorandum, and I'd ask if he could take a look at that.

1 A. Yes, I did find that paragraph.

2 Q. Does that refresh your recollection --

3 MR. CASEY: Page, please.

4 THE WITNESS: Yes, I see the name here.

5 BY MR. GORDER:

6 Q. Did you tell --

7 MR. CASEY: Can you refer us to the page,
8 please, in the report.

9 MR. GORDER: Page 6.

10 THE INTERPRETER: In our translation, it's
11 number 6.

12 THE WITNESS: We received this digest through
13 using some technical means while we intercepted
14 communications.

15 BY MR. GORDER:

16 Q. And what was the information --

17 A. That's why I do not know those names myself.

18 Q. And what was the information about Al-Qadi?

19 A. So that name came up in one of the intercepted
20 communications.

21 Q. And what did you learn about Al-Qadi?

22 A. We learned about this name for the first time
23 at that time. And when we placed it against our
24 records, we didn't see it, we didn't find it.

25 MR. CASEY: Your Honor, if I could ask for

1 clarification here. It looks like the witness is again
2 reading from a document that is being used to refresh
3 his recollection, which is not permissible. He may look
4 at the document, as Your Honor knows, and then testify
5 from -- as to whether it refreshed his recollection or
6 not. He cannot read the document into evidence.

7 THE COURT: Is that an objection?

8 MR. CASEY: That's an objection.

9 THE COURT: Overruled.

10 BY MR. GORDER:

11 Q. Sir, did you learn that Al-Qadi sent 480,000
12 Saudi riyals to Chechnya?

13 A. These data actually proved what we knew before,
14 that al-Haramain used a system of collecting charities.
15 I think that was one of the charities that they
16 received.

17 Q. Now, did you or the Russian government, I guess
18 is -- should I ask, did the Russian government intercept
19 some phone calls between people in Chechnya and
20 al-Haramain representatives in Saudi Arabia?

21 A. At that time we were intercepting all
22 communications between the masterminds of the terrorist
23 groups. The al-Haramain was very active in
24 communicating with the gang leaders and so we got
25 sufficient proof for us to know that that was happening,

1 they were communicating.

2 Q. Was there a February 2000 phone call with
3 Aqil-Aqil, the head of al-Haramain in Saudi Arabia, that
4 the Russian government intercepted?

5 A. Yes, I do.

6 Q. Could you tell us --

7 A. That was not the only communication that we
8 intercepted.

9 Q. Could you tell us what the February 2000 one
10 was about?

11 A. At that particular conversation Sheikh
12 Aqil-Aqil was giving his account of what particular
13 weapons they purchased to Khattab.

14 Q. And --

15 A. And at that time Khattab was asking Aqil-Aqil
16 to ship additional uniforms, weight uniforms, to his
17 units.

18 Q. Can you tell us what kind of weapons were they
19 talking about?

20 A. So there was different propel grenades and
21 machine guns, sniper rifles, and then also a special
22 device which is called PTUR named "Fagot," and that is
23 the anti-tank grenade launchers meant to destroy tanks.

24 Q. Did you intercept a phone call about how much
25 money al-Haramain had?

1 A. They were constantly talking, and we
2 intercepted plenty. How much money they collected and
3 where to -- how to distribute that money. In February
4 of 2000 in particular, al-Haramain was saying that they
5 have -- they managed to collect \$50 million specifically
6 to deliver to Chechnya. Abu Umar al-Sayf was personally
7 responsible for the delivery of those funds.

8 Q. And did they use a code name for Abu Umar?

9 A. His code name over the phone was Abu Maleek
10 (phonetic).

11 Q. Was there a phone call where Aqil-Aqil
12 discussed future operations against the Russians?

13 A. Yeah. We did intercept conversation of this
14 kind. They were very interested in how Russian troops
15 were relocating. And also they were discussing the
16 terrorist activity against Russian forces, Russian
17 troops. al-Haramain was involved in the propaganda of
18 terrorism. They were very active in placing different
19 sorts of advertisement on the Internet and in the mass
20 media.

21 Q. Now, when you say "terrorist," do you mean the
22 mujahideen in Chechnya?

23 A. Yeah, exactly.

24 MR. GORDER: Your Honor, I have no further
25 questions. I'd move the admission of Exhibits 4 through

1 11 for purposes of sentencing.

2 THE COURT: Any objection?

3 MR. WAX: Yes, Your Honor. We believe that it
4 is not the best evidence, as the court is aware, and
5 we'll get into in cross-examination the Russians alleged
6 that they intercepted conversations, they allege that in
7 the normal course they destroyed the tapes. You have
8 the declaration of Colonel Lang who, as you have heard
9 in court, former head of human intelligence for this
10 country's Department of Defense who says that is an
11 absurdity.

12 This is not the best evidence. This is
13 unreliable. You will also note that many of these
14 exhibits have dates on them of 1997, '98, 2003, 2004.
15 There is no temporal relevance and most significantly,
16 there is absolutely no connection between anything that
17 was said and Pete Seda. This is completely irrelevant
18 and unreliable, and we object.

19 THE COURT: The exhibits are received. Your
20 arguments go to the weight.

21 We'll take a 5- or 10-minute health break, and
22 then we'll continue. Please tell the witness that we'll
23 be in recess for just a few minutes. If he wants to use
24 the bathroom or something, he may.

25 (Recess: 9:52 until 10:03 a.m.)

1 THE COURT: You may cross-examine.

2 CROSS-EXAMINATION

3 BY MR. CASEY:

4 Q. Sir, my name is Bernie Casey. I'm one of the
5 lawyers for Mr. Seda -- Mr. Sedaghaty. Sir, could you
6 identify the person next to you in terms of what his
7 role is today?

8 A. He's an interpreter. He's an employee of the
9 Federal Security Service, too.

10 Q. So he is an interpreter for you this morning?

11 A. Today we have the interpreter that is in the
12 courtroom.

13 Q. That's correct. So what is Mr. Fedotov's role
14 this morning or today?

15 A. Excuse me, please, if I ask you that, what do
16 you mean by asking this question?

17 Q. I think the question is self-explanatory, sir.
18 What is his function for you this morning?

19 A. We -- there was an agreement before that there
20 will be an interpreter on each side. For example, if
21 one of the interpreters get tired or something happens,
22 you know, then the second will step in.

23 Q. So that is his only function as far as you
24 know?

25 THE INTERPRETER: Laughing.

1 A. I don't have an answer to your question.

2 Q. What else is he doing there with you today
3 besides interpreting?

4 MR. GORDER: Your Honor, it's been asked and
5 answered.

6 MR. CASEY: He hasn't been answering it, Your
7 Honor.

8 THE COURT: Well --

9 THE WITNESS: He's also helping me out when you
10 name the documents, he helps me out to find exactly what
11 is there, sort of an assistant.

12 BY MR. CASEY:

13 Q. He has been talking during the course of your
14 testimony. What has he been telling you?

15 A. We thought that there is some certain
16 misunderstanding on your end that al-Haramain sent 25
17 operatives to the borderline of Russian Federation. And
18 he wanted me to reiterate what I already said to clear
19 this up.

20 Q. Have you worked with Mr. Fedotov in connection
21 with your testimony this morning?

22 MR. GORDER: Objection, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: Yes. He was sort of a liaison
25 with the federal prosecutor and all the legal

1 activities, yes, he was a liaison. He is a liaison.

2 BY MR. CASEY:

3 Q. Did he meet with the federal prosecutors from
4 the United States?

5 A. Yes, we met over the telecommunications, over
6 the TV.

7 Q. As I understand it, he is an agent of the FSB,
8 correct?

9 A. He's an employee of the Federal Security
10 Service, and I am too.

11 Q. Does he have a rank?

12 A. Sure, he does.

13 Q. What is --

14 A. He works in the international unit, and so his
15 job is to -- the relationship with our American
16 counterparts.

17 Q. What is his rank?

18 A. He is lieutenant colonel.

19 Q. Is he a supervisor of yours?

20 A. We work in completely different units, and he
21 is not my supervisor.

22 Q. Does he speak English?

23 A. Yes, he has a very good command of English
24 language.

25 Q. Do you speak English?

1 A. Is the question to me?

2 Q. Yes.

3 A. A little, very little. (In English): Just a
4 little.

5 Q. That's more than I speak Russian. Tell me a
6 little bit about the FSB. As I understand it, it's the
7 successor to the KGB, correct?

8 A. Federal Security Service, it's very analogous,
9 it's similar to the functions that the FBI is doing.

10 Q. It's the successor to the KGB, is it not?

11 A. Not exactly. In 1991, there were 15 different
12 organizations that branch out. For example, we have the
13 SVR, which is our intelligent service. Then there is
14 the federal protection service, and many other
15 departments that were successors.

16 Q. I understand, sir. It's an umbrella
17 organization. Do you know what I mean by that?

18 A. Not exactly.

19 Q. Let me explain. It's the agency that has
20 overall responsibility over all law enforcement and
21 intelligence agencies in the Russian Federation,
22 correct?

23 A. No, absolutely not. We have different
24 functions and different goals.

25 Q. You have a responsibility for maintaining

1 internal Russian national security?

2 A. Yes, internal investigations is part of our
3 job.

4 Q. Yes. And you also conduct --

5 THE INTERPRETER: I want to repeat because I
6 didn't hear him.

7 THE WITNESS: So then as a counterintelligence
8 body, that's us.

9 BY MR. CASEY:

10 Q. Okay. You are responsible among -- for, among
11 other things, the interception of communications on --
12 in territories outside of the Russian Federation, are
13 you not?

14 A. No, we don't have that capability.

15 Q. Okay. So you do not do any interceptions of
16 communications at all; is that what you are saying?

17 A. If you are talking about what we were just
18 talking previously, yes, those communications were
19 intercepted because we were specifically monitoring the
20 leaders of gangs.

21 Q. The leaders of what?

22 A. Of the leaders of the gang formation.

23 Q. I didn't understand. The leaders of what
24 information?

25 A. Gangs. They call them gangs. They are bands,

1 band formations. So Abu-Qutaybah, Abu-Walid, Abu-Hafs.

2 Q. So we understand your testimony today, and that
3 testimony related in part to interceptions of certain
4 individuals engaged in military conflict in the
5 Caucasus, correct?

6 A. Yes, you got me right exactly.

7 Q. And those interceptions were made by FSB
8 operatives, correct?

9 A. Yes. We have some technical units that are
10 involved in intercepting communications.

11 Q. And that is a major part of the responsibility
12 of the FSB, is it not?

13 A. The major role of the FSB and one of the major
14 roles is to combat terrorism, that's right.

15 Q. So in that sense, the FSB is what you would
16 call a combat support agency for the Russian military,
17 that is part of its responsibility?

18 A. I didn't understand. I didn't fully understand
19 your question.

20 Q. Part of the responsibility of the FSB is to
21 protect Russian national security?

22 A. Yes, sure, that's true what you just said. And
23 espionage is part of it.

24 Q. All right.

25 A. And also we combat, you know, narco traffic and

1 mafia.

2 Q. Incidentally, sir, today can you actually see
3 me? Am I being -- is there videotape?

4 A. You mean -- yes, he does.

5 Q. Where are you physically located today?

6 A. I'm in Moscow.

7 Q. Where in Moscow?

8 A. In the very center. I am at the Federal
9 Security Service.

10 Q. More specifically, I assume you are at the FSB
11 headquarters, is that --

12 A. Yes, you are right.

13 Q. And that's in Lubyanka Square, as I understand
14 it?

15 A. You know a lot.

16 Q. And that's the same headquarters that the KGB
17 had, am I right?

18 A. No. KGB was much bigger. It was a huge
19 organization.

20 Q. No, I'm not saying that. I'm saying that you
21 are in the same building that was the headquarters that
22 the KGB was in.

23 A. Of course, if we were part of the KGB, yes,
24 that's the same building.

25 Q. Okay. Now, there is a former KGB agent and FSB

1 director who is now -- I believe his title is president
2 of the Russian Federation, correct?

3 A. Yes.

4 Q. That would be Vladimir Putin?

5 A. Yes, you're right, that's Putin.

6 Q. Okay. Tell me a little bit about your
7 background, sir, just a little bit more than we get into
8 on direct examination. First of all, how long have you
9 been employed by Russian intelligence agencies?

10 A. I want to once again stress the point that we
11 are not an intelligence organization.

12 Q. Okay. Call it what you will.

13 A. No, that's -- that makes sense to me to stress
14 it once again that we are not intelligence. We are not
15 involved in espionage. We are trying to catch the
16 spies.

17 Q. All right. I'm not going to argue the point
18 with you, but how long have you been employed by the
19 FSB?

20 A. More than 25 years.

21 Q. Twenty-five years. So that would go back to
22 the '80s, I guess, huh?

23 A. Yes, yeah, correct.

24 Q. How much more than 25 years?

25 A. A little bit.

1 Q. Okay. So the FSB came into existence, as I
2 understand it, sometime in the '90s, correct?

3 A. You know what, we had different acronyms.

4 Q. So were you ever employed by -- were you ever
5 employed by what we know as the KGB?

6 A. Yeah, sure.

7 Q. What was your role with the KGB?

8 A. Counterintelligence, same thing as I'm doing
9 now.

10 Q. Counterintelligence. Okay. And -- well, so
11 you described yourself as an operative, right?

12 A. Not anymore.

13 Q. What is an operative?

14 A. What is an operative activity, what we do,
15 participation in investigation of different crimes, so I
16 was involved in counterespionage, that was my specific.

17 Q. Counterespionage, what -- can you tell me what
18 that means?

19 A. So we have such a notion which is like
20 investigation of subversive activities.

21 Q. Okay. Do you get involved in -- as an
22 operative in counterespionage -- did you say
23 counterespionage? As an operative involved in counter-
24 espionage, do you get involved with intercepting
25 communications?

1 A. No. The technical services are involved in
2 that activity.

3 Q. Okay. So you are not specially trained then in
4 the technical aspects of intercepting communications?

5 A. No, I don't have this type of training.

6 Q. Now, during the period let's say in the 1990s
7 through early 2000, were you involved as an operative in
8 counterespionage operations at that time?

9 A. Yes.

10 Q. And I believe you testified that part of your
11 responsibility during those years was to investigate
12 certain charities?

13 A. Yeah, sure.

14 Q. And did you -- in connection with those duties,
15 did you ever personally participate in intercepting
16 communications?

17 A. I was never personally involved in intercepting
18 communications.

19 Q. So is it fair for me to understand that you
20 have no personal knowledge with respect to any of the
21 communications that were intercepted that you testified
22 to today?

23 A. I don't understand the question.

24 Q. Let me repeat it. You testified today, sir,
25 about various communications that were intercepted, did

1 you not?

2 A. Yes, sure, I testified.

3 Q. Did you intercept any of those communications
4 personally?

5 A. I think I start to understand what you are
6 driving at.

7 Q. Sir, the question is self-explanatory. You may
8 consult with your counsel there.

9 A. I was -- the reality is that I was the head of
10 the group that was supervising and was involved in
11 investigation of the terrorist activity in northern
12 Caucasus. So I was receiving all of the detailed
13 information that was related to this. And one of that
14 was the intercepted communications.

15 Q. All right.

16 A. And I had technical services doing that, and
17 they have specially trained people, technicians, who are
18 trained to intercept those types of communications.

19 Q. All right. So -- go ahead --

20 A. So they are specialists, they are
21 professionals, they know what they are doing, so they
22 have the library of voices.

23 Q. What is that now?

24 A. So the library of voices means that we have the
25 voices of the terrorists recorded.

1 Q. Well, now that you've raised that, let me ask
2 you some more questions about that library.

3 MR. GORDER: Your Honor, can we at least have
4 the witness be able to finish --

5 MR. CASEY: I'm trying, Your Honor.

6 THE COURT: You actually interrupted him, but
7 allow the witness to finish his answer.

8 BY MR. CASEY:

9 Q. Did you finish your answer?

10 A. I continue. With 100 percent accuracy, I can
11 testify that my specialists, highly trained specialists,
12 identified the voices of various people. One of them
13 was Sheikh Aqil bin Abd-al-Aqil.

14 Q. I'd like the names of those specialists
15 identified, any of the persons involved in the
16 communications that you testified to today.

17 MR. GORDER: I'm going to object. We're
18 getting far afield.

19 THE COURT: Sustained.

20 THE WITNESS: That's secret information and we
21 don't disclose that.

22 BY MR. CASEY:

23 Q. Okay. Now, tell me more about your
24 responsibilities during this time in question, during
25 the 1990s to early 2000s, you said you were the head of

1 the investigative team.

2 A. Yes, the subunit.

3 Q. All right. Describe the unit for me, please,
4 just in terms of how many people worked for you?

5 A. That's classified information and I cannot tell
6 you.

7 Q. Where were you located during these years?

8 A. Very often I was in the Caucasus. In 1997
9 alone, I had more than 30 trips to that region.

10 Q. What about 1999 and 2000?

11 A. Same, a lot of trips there, and all of them
12 were related to the investigation.

13 Q. You are no longer an operative, correct?

14 A. No, I'm not involved in this type of work any
15 longer.

16 Q. Let me back up a second. What was your rank
17 during the years of 1990s to early 2000?

18 A. Colonel from 2000.

19 Q. Before that?

20 A. Lieutenant colonel.

21 Q. All right. And what is your -- you are no
22 longer an operative today, but how would you describe
23 your responsibilities today?

24 A. I am the head of the center of our
25 communications for the Federal Security Service.

1 Q. So you are a spokesperson for the FSB?

2 A. Yeah, yeah, I -- we can call it that.

3 Q. Okay. When did you assume those
4 responsibilities?

5 A. From 2001.

6 Q. Okay. Let me ask you some questions about the
7 circumstances leading up to your testimony today,
8 please. As I understand it, you were interviewed in
9 Lubyanka Square by a Lieutenant Colonel Romanov -- I'm
10 sorry, Romanovsky on December 3, 2008, am I correct?

11 A. Can you please repeat the date.

12 Q. You may refer to your report, sir.

13 A. Oh, okay, yeah, sure, that's the date.

14 Q. Who is Lieutenant Colonel Romanovsky?

15 A. He's deputy chief of a unit of investigative
16 unit.

17 Q. Who was present in the room during this
18 interview?

19 A. I don't remember. I can find out. I don't
20 remember.

21 Q. Was there -- were there other people there
22 besides you and the lieutenant colonel?

23 A. Yes, there was an investigator.

24 Q. Was Mr. Fedotov there?

25 A. No, he had no -- no, he was not there.

1 Q. Okay. Was -- are you familiar with the
2 prosecution team in this case?

3 A. You mean the federal prosecutor?

4 Q. I mean the American prosecutors.

5 A. Yeah, I understand the general prosecutor and
6 the employees of the FBI.

7 Q. Were they there? Was anybody from the
8 prosecution team there during this interview?

9 A. So you are referring to the interview of
10 Romanovsky?

11 Q. That's right.

12 A. No, nobody was there.

13 Q. Okay. So Mister -- do you know Mr. Cardani?

14 A. Who is Cardani?

15 MR. CARDANI: I'm irrelevant to this
16 proceeding. Can you have him hold off. Judge, just to
17 get this going, Mr. Gorder and I and the agents took a
18 trip to Moscow as part of this information gathering
19 process. We met with this witness and others. That's
20 different than the interview report itself.

21 MR. CASEY: Understood. Thank you. That helps
22 speed things along.

23 BY MR. CASEY:

24 Q. You have met Mr. Cardani and Mr. Gorder then
25 and had an interview with them, correct?

1 A. You know, I tell you this, I'm a little bit
2 confused with the names.

3 Q. Sure. But you met with representatives of the
4 prosecution team in this case?

5 A. Yes. There was the federal side, there were
6 the prosecution team, yes, I met with them.

7 Q. How did this all come about? Do you know what
8 led to your involvement with the American prosecution
9 team?

10 A. We received a request from the Federal Bureau
11 of Investigation regarding al-Haramain. And this is in
12 the frame of our partnership relationship, we exchange
13 information.

14 Q. And the partnership, I believe it's called the
15 joint counterterrorism working group, does that --

16 A. Yes, that is exactly as it is, it is our joint
17 work against terrorism.

18 Q. And in --

19 A. I think that this is a very rewarding work
20 because terrorism has many, many forms. And they adjust
21 to the particular country they dwell in. So they
22 somehow work out their relationship with the rulers of
23 that country, so I don't think that we can fight this
24 animal without joint work.

25 Q. Okay. And so the -- the Russians received a

1 request for information about al-Haramain, correct?

2 A. Yeah.

3 Q. And the Russians requested the Americans give
4 them some information, too, right?

5 A. No, we didn't send any requests regarding any
6 information. Actually, we stopped our investigation in
7 2001.

8 Q. Okay. Did you receive any intelligence
9 information from the American team?

10 MR. GORDER: Your Honor, I'm going to object.
11 We're getting beyond the --

12 MR. CASEY: Your Honor, this goes to the heart
13 of credibility.

14 THE COURT: I'll allow this question to be
15 answered.

16 THE WITNESS: Yeah, intelligence information?
17 BY MR. CASEY:

18 Q. Any kind of information.

19 A. So you are -- you are trying to say that we
20 recruited some of the employees of the FBI?

21 Q. Was there an exchange of information between
22 the Russians and the Americans in connection with your
23 being interviewed in this case?

24 A. Okay. I understand what you are asking me.

25 Q. So what's the answer?

1 A. Our colleagues from the FBI told us that they
2 are investigating financial activities of --

3 THE INTERPRETER: I asked him to repeat what he
4 said because I missed the second part.

5 Q. Yeah. What did the FBI or any member of the
6 American prosecution team give to the Russians in this
7 connection?

8 A. So what period are you talking about?

9 Q. During the time that you were being interviewed
10 for the purposes of this prosecution.

11 A. No, I didn't receive any.

12 Q. I'm not asking about you personally. I'm
13 talking about the Russian government, if you know.

14 A. I am not the one who is involved in exchange of
15 the information. We have different units who do that.

16 Q. Okay. Fine. I'm just asking you what you know
17 yourself, sir. If you don't know, you don't know.

18 A. So I was asked to come over and to be
19 interviewed and answer questions regarding al-Haramain,
20 that's all.

21 Q. I know that. My question is, if you know, what
22 information did the American team give to you or the
23 Russians in connection with this investigation?

24 A. I am not aware of any information. I was
25 invited to attend the discussion as an employee who was

1 involved in the activities of al-Haramain.

2 Q. Did you see any files that -- I'm sorry, finish
3 your answer, please.

4 THE INTERPRETER: Excuse me, please, when both
5 of you talk, I miss the entire conversation --

6 MR. CASEY: I'm sorry.

7 THE INTERPRETER: -- and that makes it very
8 difficult.

9 MR. CASEY: I'm sorry.

10 THE INTERPRETER: So I will ask him to repeat
11 everything. I didn't hear a single word.

12 Again, I was invited to give evidence regarding
13 al-Haramain and all of the activities in the Caucasus.

14 BY MR. CASEY:

15 Q. I know that. I have another question. Are you
16 aware of any information of any kind given by the
17 American prosecution team to the Russians about this
18 case?

19 A. The only thing that I know, and that is all, is
20 that the employees of the FBI are involved in the
21 investigation of financial activity of al-Haramain, and
22 that's all I know.

23 Q. Did they show you or anybody that you know, did
24 they show any files, any computers, any hard drives, any
25 videotapes, any recordings, any pictures, any documents?

1 A. I didn't see any information. And I want to
2 reiterate that no printouts, no computers, no hard
3 drives, nothing, I've seen nothing, and I want to again
4 repeat that.

5 Q. What have you done to prepare yourself for this
6 testimony today?

7 A. I collected a lot of confidential information
8 that we -- for example, I have the protocols of the
9 reports that we interviewed one of the students at the
10 Kavkaz Institute. He is Uighur by nationality. And he
11 was trained at the Al Kavkaz Institute in 1997, so he
12 was an explosives specialist, he was trained as such.

13 Q. When did you interview him, sir?

14 A. 1997, August 1997.

15 Q. Okay. But I'm talking about in specific
16 preparation for your appearance here today.

17 A. This one that you just mentioned?

18 Q. No.

19 A. Then also the terrorist Dekyushev, his report.

20 Q. I'm sorry, I missed --

21 A. Who was sentenced -- who got a life sentence in
22 2004. His name is Dekyushev, D-E-K-Y-U-S-H-E-V. For
23 his explosions in the cities of Moscow of the living
24 quarters of the high-rises in Moscow and Volgodonsk.

25 Q. When did you interview him?

1 A. 2004.

2 Q. What else?

3 A. Also the leaders of the -- the terrorist
4 leaders, we created a list of them with international
5 terrorists --

6 Q. And that list is included in your report?

7 A. -- who were the head of those band formation
8 that is northern Caucasus.

9 THE INTERPRETER: And I will repeat your
10 question.

11 No, I haven't sent it to you yet.

12 Q. What -- you are looking at papers there. Can
13 you tell me what those papers are?

14 A. That is the list I am talking about.

15 Q. Okay. So some of your testimony today is based
16 on those papers; is that right?

17 A. Yes, specifically for the report we prepared
18 some, we have some notes.

19 Q. As you go forward with this examination this
20 morning, sir, if you are referring to any particular
21 papers, please identify them, and please let us know if
22 you have --

23 A. Can you please explain in more detail what you
24 want from me?

25 Q. Yes. You have a number of papers before you.

1 You've been referring to them on and off.

2 A. Different reports? This is the report of one
3 of the interviews.

4 Q. Now, as I understand it, we do not have copies
5 of those reports.

6 A. And also some of the information that we
7 sent -- the majority is the documents that we sent to
8 you before.

9 Q. The documents you sent to us before do not
10 include your witness interviews, do they?

11 A. Again, I don't understand why you ask this.

12 Q. Let me -- go ahead.

13 A. What interview are you talking about?

14 THE INTERPRETER: He said something.

15 Q. Let's move on.

16 A. I don't understand what you are asking me then.

17 Q. We're going to move on. You were supposed to
18 testify at the trial of this case but you did not. Why
19 not?

20 MR. GORDER: Objection, Your Honor.

21 THE COURT: Sustained.

22 BY MR. CASEY:

23 Q. Were you supposed to testify as a witness at
24 the trial of this case, sir?

25 MR. GORDER: Objection.

1 THE COURT: Sustained.

2 BY MR. CASEY:

3 Q. Sir, you have testified that during the 1990s
4 and 2000, your principal responsibility was to
5 investigate certain charities operating in the Caucasus;
6 is that correct?

7 A. Yes, that's right.

8 Q. Were all of those charities Mideastern in
9 origin?

10 A. For the most part, yes. They are primarily all
11 of them had roots in the Middle East.

12 Q. And you said that you were investigating
13 illegal activity, correct?

14 A. Yes, that's right.

15 Q. And I believe you described the illegal
16 activity as meaning that the organizations were not
17 properly registered with the Russian Federation. Did I
18 understand you correctly Russian?

19 A. According to our laws, any activity that is not
20 properly registered is considered to be illegal.

21 Q. And that's why you were investigating the
22 charities because they were not properly registered,
23 correct?

24 A. No, not just because of that. Those
25 organizations were hurting, were damaging Russia.

1 Q. And I believe you said that they were
2 damaging --

3 A. So they were damaging the Russian Federation.

4 Q. And I believe you said they were damaging the
5 Russian Federation because they were engaged in
6 financing terrorism; is that correct?

7 A. Not just because of that, no. As I already
8 mentioned, there was one of the key figures who was Abu
9 Umar al-Sayf, and he's one of the key figures in the
10 organization.

11 Q. Most of your testimony, as I recall, though,
12 was related to the involvement of charities in financing
13 what you call terrorism, am I not correct?

14 A. I want to continue that one of the projects was
15 al-Haramain, and also they were recruiting new members
16 into terrorist activity. I can use one example. In the
17 Republic of Dagestan, which has a border with Chechnya,
18 there are two villages, Karamakhi and Chabanmakhi both
19 in the mountain regions. So Abu Umar al-Sayf, so one of
20 his projects, so he was financing some terrorist cells,
21 so he was also involved in creating the bands that are
22 sort of guerrilla bands, guerrilla gangs. So the local
23 militia, the local police, was not active there, so they
24 chased it away. So the local peasants, they were
25 building concrete walls. And when there was a terrorist

1 invasion of Chechnya into Dagestan in 1999, they used
2 the terrorist cells that were already created on the
3 territory of Dagestan.

4 Q. Now --

5 A. And Abu Umar al-Sayf was personally involved in
6 the creation of those cells.

7 Q. I'm going to be asking you some questions about
8 some of these incidents that you testified to. And I
9 believe you stated that during the time in question,
10 during the 1990s and early 2000s, there was a war going
11 on in the Caucasus.

12 A. War?

13 Q. Those were your words, at least that was the
14 translation.

15 A. In summer of 1999 --

16 Q. Let's back up. Let's back up. Before we do,
17 I'm going to ask you one more question about --

18 A. In August of 1999, so the terrorist band
19 formations from Chechnya, came from Chechnya into the
20 Dagestani territory, and they tried to capture power of
21 the -- of Dagestan, so we -- and there was definitely
22 the response of the local people who battled them,
23 combated them. And at the end of the 1999, to establish
24 the constitutional regime, the federal forces --

25 Q. Okay, sir --

1 A. -- were pulled into the Republic.

2 Q. I'm sorry. Sir, I understand that you have
3 considerable knowledge about the conflicts that went on
4 with Chechnya. And I have specific questions about
5 that, so if you bear with me, my first question goes
6 back to your use of the term "terror" and "terrorists."
7 And I noticed that you use that term only in connection
8 with people that were fighting against Russia and not
9 with respect to Russians. Did I hear your testimony
10 correctly?

11 A. That is not exactly right. I think that
12 "terrorist" and "terrorism" is an international term.
13 We don't have our own understanding or definition of
14 terrorism. If I use international terrorism, I mean
15 people who got educated at the International Institute
16 of Kavkaz, and they went to the country they came from.
17 So, for example, there was a person from the U.S.A. --

18 Q. Understood. And you are talking now
19 specifically about the Kavkaz Institute?

20 A. I'm specifically talking about the Kavkaz
21 Institute because it was the international camp of the
22 preparation of terrorists.

23 Q. And -- and --

24 A. And there is a reason why I took the report of
25 this Uighur person because he graduated from there.

1 Every student who graduated from that institute, his
2 diploma work was to commit a terrorist act.

3 Q. Now, you are not telling me that the only --
4 the only instances of terror are those that were
5 committed by people who were trained at the
6 international center in Kavkaz, are you?

7 A. Of course not.

8 Q. All right.

9 A. No.

10 Q. So --

11 A. We have Russian terrorists. So if we start
12 talking about nationalities, there were Russian people
13 among those.

14 Q. I think you would agree with me --

15 A. And those were those Russians I'm talking
16 about, they also committed terrorist acts.

17 Q. I think you would agree with me, would you not,
18 that sometimes it's difficult to distinguish between
19 acts of terror on the one hand and acts of warfare on
20 the other.

21 MR. GORDER: I'm going to object. I think
22 we're getting beyond the scope of sentencing.

23 MR. CASEY: Your Honor, if I may address that,
24 one of the elements, one of the many elements in our
25 position that the terrorism enhancement does not apply

1 is that it's just -- it does -- the terrorism
2 enhancement and federal crimes of terrorism are not
3 intended to cover acts that occur in conventional war.
4 And I want to ask this witness specific questions. I'm
5 trying to be very precise with this, and concise, but
6 this is a central element -- one of the central elements
7 of our position.

8 THE COURT: I'll allow a few questions.

9 MR. CASEY: Thank you, Your Honor.

10 BY MR. CASEY:

11 Q. Let me ask you some questions about the
12 struggle with Chechnya. It goes back many centuries,
13 doesn't it?

14 A. I think that if we start going back into
15 history, our discussion will be very long.

16 Q. I don't want to go back into history. I just
17 want you to answer yes or no.

18 A. My point is that the graduates of the Institute
19 of Kavkaz, they were blowing up the civilian -- the
20 high-rises where civilians live. You know, those
21 terrorist acts were not against the military personnel.
22 They were against civilians. And that is my major
23 point.

24 Q. Understood. Let me talk to you first about the
25 first war in the 1990s. It started, as I recall, in

1 1994 and ended in August of 1996; is that correct?

2 A. End of '94, right. And then there was an
3 agreement signed where we were giving certain rights so
4 Chechnya didn't secede from the Russian Federation. It
5 was an autonomous republic. It was given some rights.

6 Q. Okay. Now, before the war actually started,
7 the Soviet Union had basically disintegrated, correct?

8 A. In 1991, yes.

9 Q. Right. And in some of the federation
10 republics, the ethnic republics, there was pressure and
11 demands for independence, correct?

12 A. No, that's not right.

13 Q. Now, are you saying that none of the republics
14 were pressing for independence from Russia during that
15 time?

16 A. Not a single republic wanted to.

17 Q. Oh, I see. And wasn't there actually a
18 struggle -- let's just talk about Chechnya, if I could.

19 A. Not to secede from Russia.

20 Q. But they wanted independence, they wanted --
21 they wanted autonomy.

22 A. I don't understand a little bit.

23 THE INTERPRETER: And let me probably say a
24 little word. There is a difficulty with the "republic"
25 word. There are republics that are autonomous, which

1 are Chechnya, or whatever you want, and there is a
2 republic which was like Estonia, Latvia, Lithuania, that
3 got their independence in 1991. So maybe it's confusion
4 about the word. That's all I wanted to --

5 BY MR. CASEY:

6 Q. All right. During that period of time, the
7 early 1990s, in Chechnya there was a struggle within
8 Chechnya between those who wanted more autonomy and
9 those who wanted more close relationship with Russia, if
10 you know.

11 A. That's a tough question.

12 Q. But you know, don't you, that during that
13 period of time --

14 A. In the early 1990s, the Islamic adversaries
15 started flooding into Chechnya.

16 Q. That's not answering my question, sir,
17 respectfully.

18 A. And Sheikh Abu-Aqil, famous Islamic ideologist,
19 came to Chechnya in early 1990.

20 Q. Sir, if you'd just let me ask my question.

21 A. So the process of Islamization started -- of
22 different circles started at that time. So the
23 adversaries promised a lot of financial support. And
24 one of the terms for those finances to actually reach
25 Chechnya was if Chechnya agrees to create an Islamic

1 state outside of the Russian territory. That was 1990.

2 Q. Okay. Now, during that point in time -- sir,
3 just let me ask my question, please.

4 MR. GORDER: He's asking these broad questions
5 and not letting the witness answer.

6 MR. CASEY: Oh, please.

7 MR. GORDER: And I'm not sure how relevant they
8 are to the purposes of --

9 MR. CASEY: Your Honor, I am trying to get to
10 the point, but we are getting soliloquies here.

11 THE COURT: It was a broad question, Counsel.

12 BY MR. CASEY:

13 Q. All right. During the 1990s, early 1990s, it
14 is true, is it not, that Russia was clandestinely
15 supporting the pro-Russian forces within Chechnya?

16 A. I wouldn't say that it's correct. What do you
17 mean "clandestinely"? It was part of the Russian
18 Federation, so nobody chased it out.

19 Q. There was an undeclared civil war in Chechnya
20 at that time?

21 A. So with all the ethnic difficulties that Russia
22 was suffering from at that period of time, there were
23 just criminal elements at that time. That started the
24 formation of bands, gangs on this territory, and they
25 were involved in simple thefts in the territory of

1 Chechnya.

2 Q. And then in December of 1994, the Russian
3 troops actually invaded the territory of Chechnya,
4 right?

5 A. No. The paratroopers battalion actually
6 entered the territory of Chechnya. It was not Russian
7 troops.

8 Q. I'm sorry, what was the distinction there?

9 A. So when you say the "troops," I mean army. And
10 it's a lot. And I'm talking about one battalion.

11 Q. All right. And during the period December of
12 '94 through January of '95, there was the battle of
13 Grozny, correct?

14 A. Yeah.

15 Q. And -- and Grozny was bombarded more than any
16 city in the history of the world during that time; isn't
17 that correct?

18 A. Yes, after this paratrooper battalion was
19 actually murdered, we started the war, we started the
20 combat activities.

21 Q. And it leveled lots of civilian apartment
22 houses and residences throughout the city?

23 A. Yeah, possibly, yes.

24 Q. And there were hundreds of thousands of
25 Chechnyan refugees that were displaced because of this?

1 A. Yes, there were refugees.

2 Q. And there were massacres of civilians in
3 various villages, including the village of Samashki
4 which is notorious, is it not?

5 A. No, this is not right. This is not the way it
6 was.

7 Q. Are you personally familiar with the
8 circumstances in Samashki?

9 A. Yes, I remember it very well.

10 Q. And after the Russians -- I'm sorry, I didn't
11 hear you.

12 A. So the story was very simple because all those
13 gangs, they were hiding in little village, which
14 belonged to civilians, right. So when we started the
15 assault, unfortunately the civilians were involved, but
16 we were fighting the gangs that were hiding in the
17 village.

18 Q. Okay. So after the Russians took over or
19 controlled Grozny, Russian troops expanded into the
20 mountain areas?

21 A. I think so, yeah, probably.

22 Q. Now, you used the term "gangs" in the villages
23 that were killed, some of these were Russian -- were
24 Chechen soldiers, were they not? By "gangs" you meant
25 Chechen soldiers?

1 A. So nobody was killing anybody in the villages.

2 Q. I see.

3 A. I think this is -- we are now in the sphere of
4 the terrorist propaganda. That's not right.

5 Q. Okay. So if I have read reports about
6 massacres by Russian soldiers in the various villages,
7 massacres of civilians, you would say that's all
8 terrorist propaganda?

9 A. Unfortunately, yes, I would agree with you that
10 is just -- that is part of the propaganda. And more
11 than that, I can tell you that America is not immune
12 from that, because you became part of the same
13 propaganda that was waged in the course of these years.

14 Q. Sir, I'm not here to debate Russian-American
15 spheres of influence or points of agreement or
16 disagreement. I'm asking you to talk about Chechnya.

17 You made reference to the Kavkaz Institute in
18 the village of Serzhen-Yurt. And it's a point of fact,
19 is it not, that that was -- the village of Serzhen-Yurt
20 is the village that the Russian soldiers forced the
21 Chechens to retreat to when the Russians were trying to
22 take over the mountainous regions?

23 A. No, that's not that village.

24 Q. Well, it is the village where they were
25 forced -- where the Chechen soldiers set up their

1 headquarters in the Kavkaz Institute, is it not?

2 A. The international terrorist camp --

3 THE INTERPRETER: He was breaking up --

4 A. So the Kavkaz Institute as the -- so I can tell
5 you the address of the institute. It is an
6 international terrorist camp.

7 THE INTERPRETER: And he's looking through his
8 papers to give us the exact address of the Institute of
9 Kavkaz.

10 Q. It's not necessary from my point of view. We
11 can agree it's in the village of Serzhen-Yurt, right?

12 A. No. They were on the left bank of the river.

13 And the river was broken up, I can't hear.

14 We are referring to Serzhen-Yurt as being in
15 the vicinity of where the Institute of Kavkaz was.

16 Q. Fair enough. Sir, Kavkaz Institute you
17 described as a training institute. You say it's a
18 terrorist training institute.

19 A. That's not my description. That's a
20 description that the students give.

21 Q. Okay. The student gave that, okay. And the
22 student -- this is the Uighur you're speaking of?

23 A. Dagestan and Uighur and many others.

24 Q. Many others meaning how many others?

25 A. Okay. Just imagine, 2000 people approximately

1 were trained there at any given time. So every three
2 months, they graduated them and then the new people came
3 on board.

4 Q. Where did you get this information?

5 A. At that time, I am talking about 1997, I was --
6 I had many, many trips to Dagestan.

7 Q. Did you ever go to --

8 A. And I was --

9 Q. Did you ever go to the Kavkaz Institute?

10 A. No. After graduation, no, they were going back
11 to the countries they came from.

12 Q. I didn't understand that. Who is going back to
13 the country?

14 A. The students graduating from the Kavkaz
15 Institute, they were returning to their native
16 countries.

17 Q. Sir, I have a simple question. How do you know
18 as much as you proclaim to know about Kavkaz?

19 A. I was a witness myself. I was taking
20 interviews, I was interviewing people.

21 Q. You've mentioned a couple of people you
22 interviewed. Anybody else?

23 A. If you want, I can make a list and send it over
24 of many students that I interviewed.

25 Q. Let's move on. You talked about their -- sir,

1 I have a question for you.

2 A. So from all these interviews that I can prepare
3 for you, it's visual that what --

4 THE INTERPRETER: And he's showing a picture of
5 some explosive devices that these people were trained as
6 explosive specialists.

7 Q. We're going to get into that.

8 A. And there is different diagrams, different
9 circuits and --

10 Q. We're definitely going to get into that. I
11 have a lot of questions on that. Bear with me first, I
12 have some other questions. You said that this is a
13 terror training camp because they taught things such as
14 sniper, explosives, diversionary activities, and murder
15 for hire, right?

16 A. Yes. We have all the evidence that we -- from
17 the interviews.

18 Q. And they were teaching these things to people
19 who were fighting the Russians?

20 A. No, that's an international terrorist camp.

21 Q. Wait, wait, wait.

22 A. They were going back to the countries they came
23 from. So I can read you something from the evidence --
24 the same Uighur person that I brought with me today for
25 the court.

1 Q. That's all right.

2 A. Who after graduation had to go back to Turkey
3 and blow up the Chinese embassy there. That was his
4 graduation task.

5 Q. All right. They were also teaching it to
6 Chechens who were fighting Russia, were they not?

7 A. Yeah, no, they were just trained there, right,
8 who were paid money to murder, to kidnap.

9 Q. Okay.

10 A. And those Chechens who later went to
11 Afghanistan and other countries. And, again, I want to
12 point out that this was all for money. They were paid
13 money for that.

14 Q. Does it surprise you that the Chechens would
15 have a training camp from military purposes?

16 A. I want to tell you that I have a lot of
17 friends, personally I have a lot of friends who are
18 Chechen, and we have a wonderful relationship. Of
19 course, there were Chechens in that camp. So, yes,
20 there were Chechens, and there were representatives from
21 many other republics there, too. But I wanted to stress
22 the point again, so what the major point -- my major
23 point is that this terrorist camp was established there
24 in order to conduct international terrorism. And they
25 were training not Chechens in that camp. They were

1 training many different nationalities and many
2 terrorists who would go to their countries, so I
3 consider this place to be an international terrorist
4 training camp.

5 Q. All right. And the Russians had training
6 camps, too, didn't they? And the Russians train their
7 soldiers in snipers, in explosives?

8 A. You are -- you want me to talk about the
9 Russian Army.

10 Q. I do.

11 A. If that's what you mean.

12 Q. Yeah, da.

13 A. I think the United States Army also have the
14 same subunits.

15 Q. All right.

16 A. And train the different --

17 THE COURT: We've been over this enough. Let's
18 go on to something else.

19 BY MR. CASEY:

20 Q. The -- both the first and second Chechen wars
21 in the 1990s ended with treatises, did they not?

22 A. The agreement was in 1996, if you mean the
23 first Chechen war, 1994, 1996.

24 Q. That's right. High representatives of
25 Mr. Yeltsin, who was the president at the time, and the

1 Chechen forces signed treaties ending these conflicts,
2 supposed to be ending the conflicts, right?

3 A. Yeah, they stopped, all the combat activity
4 stopped.

5 Q. Okay. Getting back to your testimony about
6 financing from al-Haramain, you referred to certain
7 exhibits which purport to be vouchers of expenses. I'm
8 talking about the FSB Exhibits 5, 6, 7, 8, 9, 10, 11.

9 A. Yeah.

10 Q. Also Exhibit 4. Now, if you look through those
11 exhibits, sir, they either involve transactions that
12 allegedly occurred in 1994 or in the years 2003 and
13 2004, correct, one also in 1997?

14 A. I don't understand what you --

15 Q. Well, look at them, sir.

16 A. Yes, all the dates are there.

17 Q. Right.

18 A. So each of the vouchers has a date.

19 Q. Yeah. 1994, 1997, and 2003, and 2004.

20 A. So what is the question?

21 Q. First of all, you don't disagree with that, do
22 you?

23 THE COURT: Let's move on, Counsel, please.

24 BY MR. CASEY:

25 Q. None of these vouchers occurred during the

1 period 1999 through the year 2000, did they?

2 A. According to the dates that you referred to,
3 no.

4 Q. Right. And do I correctly understand that
5 these documents were all taken off the computer of Abu-
6 Qutaybah?

7 A. No, they were different, different sources.

8 Q. Tell me the sources of the other documents.

9 A. So this is our -- the agents got those
10 documents and we already answered this question to the
11 prosecution.

12 Q. Could you just refresh my recollection. I
13 heard the Qutaybah computer. Where else?

14 A. So from the Qutaybah's computer, FSB 5, that's
15 Qutaybah's computer. FSB 6, FSB 7, FSB 9, and that's
16 it.

17 Q. Okay. Now, the Kavkaz Institute was not
18 operating beyond the year 2000, was it?

19 A. End of 2000, yeah, it was not functioning
20 anymore.

21 Q. Did you say 1997 to 2000?

22 A. Yeah, that's right.

23 Q. All right. Was the material on the Qutaybah
24 computers, was that coded or not?

25 A. No, no, they were not.

1 Q. So he just -- this is all written in what,
2 Arabic or Russian or what was it written in?

3 A. No, Russian is a translation and --

4 Q. Were they translated by the FSB?

5 A. Yeah.

6 Q. Your testimony was that we, meaning the FSB,
7 intercepted all communications between the terrorist
8 masterminds, right?

9 A. Yes, I confirmed that.

10 Q. And some of those interceptions took place
11 under your supervision?

12 A. I was the head of the group that was
13 investigating the activity of the organizations that
14 were involved in subversive activity.

15 Q. Okay.

16 A. According to my requests, I received intercepts
17 of those communications that were related to my sphere
18 of activity.

19 Q. And did you receive the -- what would you
20 actually receive from the people who were intercepting
21 the communications? Would you receive the audiotape?

22 A. Yes, we received audiotapes and also we
23 received the transcripts.

24 Q. And when would you receive this information
25 relative to the time that the interception actually took

1 place?

2 A. Actually it is -- I referred to that in my
3 testimony. Beginning with the 1997 and up to 2001.

4 Q. But how much time would elapse between the time
5 of the interception and the time you got the information
6 in your official position?

7 A. This is our technical secrets and this is our
8 technical capabilities that are classified and I can't
9 talk about that.

10 Q. All right. Let's talk about the specific
11 interceptions that you did talk about. Okay. So you
12 talked about interceptions that occurred -- bear with me
13 for a second. Before we talk about that, the specifics,
14 I just want to ask you an overall question. You
15 testified that this information was obtained through
16 technical means. Can you tell me what the technical
17 means were.

18 A. I'm not a specialist in technology. I have no
19 idea how it is even -- how they do it.

20 Q. Radio, satellite, telephone, fax, what was it?

21 A. That's it.

22 Q. As we say --

23 A. My speciality is -- I'm a humanitarian, so
24 please.

25 Q. I'm sorry?

1 THE INTERPRETER: His speciality is humanity.
2 He doesn't know technical stuff at all.

3 THE COURT: Counsel, you may have up to 25 more
4 minutes.

5 MR. CASEY: Thank you, sir. I think that's all
6 it should take.

7 BY MR. CASEY:

8 Q. Okay. I want to ask you about specific
9 intercepts that you did testify about. And you
10 mentioned in particular a communication in February of
11 the year 2000. And you testified that that was a
12 communication involving emissaries from Chechnya and
13 Mr. Agil, who was the head of al-Haramain. Do you
14 remember that?

15 A. Yeah, February of 2000, yes, I do remember.

16 Q. Okay. And you testified that a communication
17 was intercepted in which the emissary from Chechnya,
18 whose name you did not disclose, talked to Agil about a
19 major terrorist operation against Russian troops,
20 correct?

21 A. Yes, that's what I said.

22 Q. And do you now know the name of the Chechen
23 that was involved in that communication?

24 A. Unfortunately, we couldn't identify all of
25 them.

1 Q. Okay. But here you are talking about a
2 particular communication. Did you actually hear that
3 communication?

4 A. Yes, I have the tapes and I was listening to
5 those tapes, too. Yes, I can testify that those
6 communications I listened myself to.

7 Q. When?

8 A. So if we are talking about the year 2000, then
9 I listened to them in the year 2000.

10 Q. When? When in 2000?

11 A. So if we're talking about February, then it was
12 either in February or in March.

13 Q. So there was an audiotape of that
14 communication?

15 A. Yes, there was a recording, special recording.

16 Q. This is the year 2010. Do you have an
17 independent recollection of listening to that particular
18 communication?

19 A. Of course I have my own notes, and I used my
20 own notes.

21 Q. We haven't seen those notes. Where are they?

22 A. Here they are in my report, in my interview.

23 Q. We have seen a report. Who prepared this
24 report?

25 A. In 2008.

1 Q. Did you prepare this report?

2 A. I didn't understand the question.

3 Q. Did you prepare the report that we're looking
4 at today?

5 A. This report is typed according to what I said
6 to my evidence.

7 Q. All right. So I'm asking about the notes that
8 you took when you first heard the telecommunication in
9 February of 2000 in which a Chechen operative told Aqil
10 about an imminent major military operation over
11 apparently live wire. Those are the notes that I'm
12 talking about. Where are they?

13 A. So all the notes are part of the file, of the
14 case file.

15 Q. Whose file -- I'm sorry. Whose file? We have
16 not seen them, have we?

17 A. So the investigation file.

18 Q. Do you have that file?

19 A. No, I don't have it.

20 Q. Who has it?

21 A. This is the archived case. This is the entire
22 case, not just the pack of documents.

23 Q. That's right. The FSB has a large archive of
24 documents and tapes, don't they?

25 A. Sure.

1 Q. Yes. And why haven't we seen them? We've
2 asked for them.

3 A. Because it is classified as top secret.

4 Q. You told us in your report that the reason you
5 don't have the audiotape of this is because it was
6 destroyed pursuant to a record retention policy, did you
7 not?

8 A. Yeah, that's true. We don't have the tapes.
9 Those were destroyed according to the policy.

10 Q. According to the policy, you have -- okay. So
11 there are two tapes that we're talking about here, the
12 one in which some unknown Chechen spills the beans about
13 an imminent major military operation to somebody in
14 Saudi Arabia, that's one tape.

15 The other tape is the -- other tape, sir, is
16 one that you say involves the leader of the Chechen
17 forces Khattab with the top leader of al-Haramain, Aqil,
18 in which they are talking over a live wire about RPG's,
19 bullets, other ammunition systems, machine guns,
20 Kalashnikov rifles, sniper rifles, et cetera. You
21 remember your testimony about that, don't you?

22 A. Yeah, sure.

23 Q. Yeah. And there was an audiotape of that, too,
24 wasn't there?

25 A. Yes, there was.

1 Q. And you heard that audiotape yourself, didn't
2 you?

3 A. Many a times.

4 Q. Many a times. Why many a times?

5 A. During that investigation, representatives from
6 Saudi Arabia came visiting us.

7 Q. And that's critical information, isn't it?

8 A. So we played those tapes. So they are --

9 Q. Please answer my question.

10 A. And so we identified that the person was Aqil
11 bin Abd-al-Aziz-al-Aqil.

12 Q. Please answer my question. That was critical
13 information in the context of a war against Chechnya,
14 wasn't it?

15 A. What do you mean by "critical information"?

16 Q. I'll let the record stand on that. I think we
17 both know.

18 MR. GORDER: Objection, Your Honor.

19 THE COURT: Sustained. Counsel, please.

20 MR. CASEY: Withdrawn, withdrawn.

21 BY MR. CASEY:

22 Q. What happened to that audiotape?

23 A. So we demagnetized those audiotapes that were
24 never requested by the court or by anybody.

25 Q. You destroyed those, right?

1 A. Yes.

2 Q. Yeah, because of a five-year record retention
3 plan?

4 A. Yes.

5 Q. Why doesn't the record retention plan pertain
6 to paper records, do you know?

7 THE INTERPRETER: There was something said.

8 A. So we have certain documents we adhere to and
9 we have to destroy the tapes. That's our policy.

10 Q. Okay. So there are no tapes in the archives
11 after five years?

12 A. If you requested those a little bit earlier, of
13 course we would give them to you.

14 Q. The -- al-Haramain I believe you -- I don't
15 know whether you said it today or not, but it's in your
16 report, al-Haramain has a close connection with the
17 government of Saudi Arabia, correct?

18 A. Yes, true. So the Islamic charity
19 organization, which is al-Haramain, so that's the Holy
20 Foundation of Two Shrines, of two shrines.

21 Q. So there is a close relationship between the
22 government of Saudi Arabia and al-Haramain?

23 A. So the royal family actually sent part of the
24 funds received by al-Haramain was -- came from the royal
25 family, yes, that's true.

1 Q. All right.

2 A. They were unaware that when they transferred
3 these large sums of money that the money would go to the
4 terrorists.

5 Q. Oh, is that so? Do you know Prince Al Turki?

6 A. His rep came over.

7 Q. What's that?

8 A. His representatives of Prince Turki, he came to
9 us, and we were working the information.

10 Q. That's right. He works closely with the --
11 both the United States and with the Russian government,
12 correct?

13 A. Of course, since I'm a representative of this
14 information, we have contacts between our governments,
15 that's true.

16 Q. And Turki is on the board of directors and was
17 on the board of directors of al-Haramain during this
18 relevant time period in the late '90s and early 2000,
19 right?

20 A. I wouldn't say -- partner he was not, but I can
21 tell you one thing, that he was -- paid great attention
22 to charity and to charitable contributions.

23 Q. That's right. And al-Haramain was created
24 sometime in the, I believe, late 1980s not just for the
25 purpose -- or not for the purpose of financing terrorism

1 but for legitimate charitable purposes, was it not?

2 A. The mission -- yeah, sure, the mission of the
3 organization was to help Muslims who were in need. That
4 was the major mission initially.

5 Q. And they had a budget of between 30 and
6 \$50 million a year, right? Do you know that?

7 A. I think much more, much more, because at that
8 moment the organization had approximately 70 branches in
9 different countries in the world.

10 Q. Sir, you may think that, but have you read any
11 specific information about their annual budgets?

12 A. To tell you -- to be exact, I want to say that
13 the Saudi representatives who came visiting us, they
14 told us that their budget is pretty big.

15 Q. Have you read the 9/11 Report that was prepared
16 by the American government in the aftermath of 9/11?

17 A. Yes, of course, I was -- I don't remember the
18 details right now, but definitely I know where and I
19 read it.

20 Q. Just to cut to the quick, their report was that
21 the al-Haramain annual budget was about \$50 million a
22 year. Would you disagree with that?

23 A. Doesn't it refer to only what was collected in
24 the territory of the United States?

25 Q. No, sir, it doesn't. That was their

1 international budget. And they accounted for how they
2 expended most of it, operating 20 orphanages around the
3 world and other humanitarian causes. Do you remember
4 that, sir?

5 A. No, I don't remember the details.

6 Q. All right.

7 A. But I think that the money they had was in
8 their found was -- their foundation had much more money
9 than you quote.

10 Q. All right. Because one of the intercepts that
11 you talk about, at least in your report, I'm not sure
12 you did explicitly this morning, maybe you did, I think
13 you did actually, you made reference to al-Haramain
14 setting aside \$50 million specifically to assist the
15 Chechen -- what you call Chechen mujahideen.

16 A. Yes, that was part of the information that they
17 communicated.

18 Q. Okay. Now, "they" being who?

19 A. al-Haramain.

20 Q. To whom?

21 A. To the leaders.

22 Q. What?

23 A. To the leaders.

24 Q. To the leaders. Sorry. And I assume that's on
25 audiotape, too, right?

1 A. Yes, it was on the tape.

2 Q. And you heard those tapes, and you have a
3 specific recollection of hearing that particular tape;
4 is that right?

5 A. Yes, I did personally.

6 Q. When? When, sir?

7 A. More than that, I had a report prepared on that
8 tape.

9 Q. I'm sorry?

10 THE COURT: She said, "more than that, I had a
11 report prepared on that tape."

12 BY MR. CASEY:

13 Q. Okay. And that report is in writing, correct?

14 A. It's in writing. Definitely, it's in writing.

15 Q. It's in the archives?

16 A. Yes, it is in archive, if you mean that report
17 that the FSB prepared.

18 Q. No, I mean your report personally.

19 A. You know, I don't have anything personally. I
20 work for the government, so it's a government report.

21 Q. Sir, among the -- we're wrapping up, Your
22 Honor.

23 Among the many people that you identified in
24 your report as being associated with al-Haramain, there
25 is one name that I did not see. The name -- in fact,

1 most of the names were all Saudi Arabians, correct?

2 A. Could you please repeat the question. I
3 didn't --

4 Q. Of all the names that you've identified in your
5 report, none of them includes Mr. Seda, right,
6 Sedaghaty?

7 A. No, no, I didn't come across that name
8 personally.

9 Q. Okay. Do you know Mr. Sedaghaty or know
10 anything about him?

11 A. No, I never knew about him, and I never heard
12 about him.

13 Q. What about Dr. El-Fiki, do you know anything
14 about Dr. El-Fiki?

15 A. No, can't tell you anything.

16 Q. So of the money that you testified was
17 transferred by al-Haramain into the hands of the
18 Chechens, you're not able to trace any of that back to
19 either Dr. El-Fiki or Mr. Seda, are you?

20 A. We didn't know exactly which country the money
21 came from.

22 Q. Okay.

23 A. And at that time, I'm now talking of 1999 and
24 2000, we couldn't monitor the flow of finances.

25 MR. CASEY: Thank you. Your Honor, I believe

1 that's it. If you give me just two minutes to confer
2 with co-counsel, I think we should wrap it up.

3 THE COURT: Fine.

4 (Discussion held off the record.)

5 BY MR. CASEY:

6 Q. Colonel Ignatchenko, can you hear me now?

7 A. Yeah.

8 Q. Could I ask what time it is in Russia now?

9 A. In Russia?

10 Q. Yes.

11 A. It's 2310.

12 MR. CASEY: You had a long day, and I am
13 through with you from here.

14 MR. GORDER: Nothing further, Your Honor.

15 THE COURT: Thank you very much. Good day.
16 We're in recess until 1:20.

17 MR. CARDANI: Judge, can we excuse the
18 translator? Is there any more need for Russian
19 translation?

20 (Recess: 12:12 until 1:30 p.m.)

21 THE COURT: Your next witness.

22 MR. CARDANI: Judge, conferring with Mr. Wax,
23 it's my understanding that they are not calling Mr. Lang
24 as a witness. And if that's the case, we're prepared to
25 call our last -- I think our last sentencing witness.

1 Before I go, I want to introduce the type of
2 testimony that we're going to hear. This is on the tax
3 loss issue identified in the presentence report. The
4 presentence report includes a figure of about \$80,000
5 for the tax loss under the sentencing guidelines.

6 This is an interesting tax case because it's
7 not a typical tax case by anybody's definition. And
8 under the sentencing guidelines that are applicable
9 here, that's the 2000 guideline books, under 2T1.1 it
10 refers to a table 2T4.1, and depending on what they call
11 the tax loss, it equates to the offense level for
12 purposes of the guidelines.

13 In the application notes in the commentary,
14 there is an understanding from the Sentencing Commission
15 that in situations where it's difficult to nail down an
16 actual tax figure, the court is to make a reasonable
17 estimate based on the available facts and a reasonable
18 calculation of the tax loss in situations where it's
19 hard to nail down the tax loss.

20 Before I call this witness for some brief
21 testimony introducing the -- how the \$80,000 figure was
22 derived, in meeting with the IRS in preparation for
23 sentencing, it's difficult, because you have to assume
24 certain things that helps drive the tax loss figures.
25 And for purposes of this next witness's testimony, we

1 asked him to assume that Mr. El-Fiki intended to donate
2 to widows and orphans true humanitarian aid. And then a
3 series of assumptions off of that. That al-Haramain
4 U.S. opposed acts of violence, opposed terrorism, could
5 not help fund it, so on and so forth. He will testify
6 that based on those assumptions that there is an \$80,000
7 tax loss. And he'll explain why that is.

8 At the risk of sounding duplicitous, if
9 Mr. El-Fiki's intent was different, and, you know, we
10 don't know truly what Mr. El-Fiki's intention was
11 because he wasn't a witness. He has given statements to
12 the Egyptian police. And there was information all over
13 the Web site. He may have had a different intention.
14 He may have intended to fund the mujahideen and helped,
15 you know, this conspiracy afoot.

16 If that's the case, this witness is also ready
17 to testify that that too would result in a tax loss but
18 under a different set of calculations. So I don't want
19 to be sounding like I'm speaking out of both sides of my
20 mouth, but some of these assumptions, the result of the
21 tax loss drive off of what the donative intent of
22 Mr. El-Fiki was.

23 MR. MATASAR: May I be heard in brief response,
24 Your Honor?

25 THE COURT: Yes.

1 MR. MATASAR: Your Honor, Mr. Cardani took the
2 position during the trial, specifically in a
3 hypothetical question that he asked Mr. Wooten, that
4 Mr. El-Fiki intended that the money go to Chechen
5 mujahideen. He indicated, when we objected, that
6 Mr. El-Fiki was linked to the Muslim brotherhood and
7 that that was the basis for their position.

8 In our view, they cannot take one position in
9 the trial to get -- to gain a benefit, which is to say
10 El-Fiki intended the money to go to Chechen mujahideen,
11 and then take a different position later on in the case.

12 We believe they should be estopped from taking
13 the other position and that they must go forward here at
14 sentencing with the position that they took during the
15 trial, especially since they took that position during
16 the trial not just as an afterthought but with the
17 specific goal of gaining advantage in the trial.

18 Therefore, we ask that they be restricted to
19 only one argument at sentencing.

20 THE COURT: We'll take the evidence. I'll sort
21 that out later.

22 MR. CARDANI: May I call the witness?

23 THE COURT: Yes.

24 MR. CARDANI: Greg Wooten.

25 MR. MATASAR: Can I ask if Mr. Owens can hear

1 the proceedings in the court?

2 MR. OWENS: Yes, I can.

3 MR. MATASAR: Thank you.

4 (The witness was sworn.)

5 THE CLERK: Please state your full name and
6 spell your name for the record.

7 THE WITNESS: Gregory Wooten, G-R-E-G-O-R-Y.
8 W-O-O-T-E-N.

9 MR. CARDANI: Excuse me one minute, Mr. Wooten.
10 Judge, some housekeeping matters, we have an
11 Exhibit 1 to our sentencing memo, which is a tax form.
12 I erroneously included some identification numbers that
13 I shouldn't have. And Mr. Wax pointed that out in the
14 form of a motion to strike it. I agree with that
15 motion. And I -- I'll offer in -- to replace it what we
16 call Redacted Sentencing Exhibit 1. I've given a copy
17 to Mr. Wax. I've provided a copy to the court. And we
18 would offer this as our sentencing Exhibit 1 at this
19 time.

20 THE COURT: Any objection?

21 MR. MATASAR: No objection, Your Honor.

22 MR. WAX: No objection, Your Honor.

23 THE COURT: Thank you. Your other motion is
24 granted on the original version.

25 Go ahead.

1 DIRECT EXAMINATION

2 BY MR. CARDANI:

3 Q. Mr. Wooten, you testified during this -- during
4 the trial of this matter?

5 A. Yes, I did.

6 Q. And, once again, your position?

7 A. I am currently a manager of Exempt
8 Organizations revenue agents for the Pacific Northwest
9 area. My position entails the management of revenue
10 agents that do exempt organizations' audits in the
11 states of Washington, Oregon, Idaho, Alaska, Hawaii, and
12 some bordering states occasionally.13 Q. And you personally have done -- engaged in
14 numerous audits of 501(c)(3) organizations.

15 A. That's correct.

16 Q. And supervised hundreds more?

17 A. That's correct.

18 Q. You were aware that after the convictions in
19 this case the IRS was asked to come up with an
20 estimation of the tax calculations based on the
21 convictions in the case?

22 A. Yes, I was aware of that.

23 Q. Were you further aware that there were certain
24 assumptions that the IRS was asked to assume that are on
25 the government's sentencing memo pages 3 and 4, are you

1 aware of that?

2 A. Yes, I'm aware of those assumptions. I have a
3 copy of the assumptions from the sentencing memo.

4 Q. Okay. Did you personally prepare those tax
5 numbers?

6 A. I did not personally prepare the calculations
7 in the redacted sentencing exhibit, no, I did not.

8 Q. All right. But are you aware, nevertheless, of
9 the information contained in the -- what we call the
10 form 4549-A?

11 A. Yes, I'm aware of 4549-A.

12 Q. Do you have that in front of you?

13 A. Yes, I do.

14 Q. Based on the assumptions that are outlined in
15 pages 3 and 4 of the government's sentencing memorandum,
16 do you have an opinion as to whether these are
17 reasonable tax estimates in the government's redacted
18 sentencing Exhibit Number 1?

19 A. Based on the assumptions that I was provided,
20 the calculations in the 4549-A are a reasonable,
21 conservative estimate of taxes that would be due based
22 upon the assumptions, yes.

23 Q. What do you mean by "conservative"?

24 A. There are some additional taxes that could also
25 have been imposed that likely -- if I, as a revenue

1 agent, were doing an examination, I potentially would
2 have. There is, for example, an assessment of excise
3 taxes for excess benefit transaction here. There is
4 actually a second tier excise tax on those types of
5 transactions if the transactions are not corrected
6 within a taxable period that would significantly
7 increase the numbers here.

8 Q. Okay. So looking at these -- what you consider
9 to be conservative numbers, it's my understanding that
10 there are essentially two types of taxes imposed on
11 Mr. Sedaghaty based on the assumptions in the sentencing
12 memo?

13 A. Well, actually there are three types of taxes
14 that are being assessed here. First, there are taxes
15 that are being imposed based upon the 1040 personal
16 income tax return based upon the assumptions that are in
17 the guidelines I was given. Those are based upon the
18 assumption that the funds were removed from the tax
19 exempt organization and are being, therefore, taxed to
20 the individual on the Form 1040.

21 Q. Before you move on, is the general assumption,
22 though, that the donation was made by El-Fiki for
23 benevolent purpose?

24 A. Yes. The assumption that I was given is that
25 it was given for benevolent purposes, then removed by

1 the defendant for what amounts to personal purposes.

2 Q. So a lay word for that might be embezzlement?

3 A. Yes.

4 Q. So with those assumptions and with that kind of
5 embezzlement theory, what are the three types of taxes
6 that have been imposed on this 4549?

7 A. The first tax being imposed is, as I just
8 discussed, relates to the 1040 return. Essentially the
9 funds that were removed from the exempt organization for
10 individual benefit are being taxed to that individual.

11 The second tax has to do with an excess benefit
12 transaction, that is a tax that is imposed upon an
13 individual that removes funds. It's a 25 percent excise
14 tax imposed upon an individual that removes funds from
15 an exempt organization with -- that the funds are not
16 considered compensation. There is no quid pro quo, so
17 to speak, in a situation where it is an excess benefit
18 over what was earned.

19 There is also a smaller tax being assessed. We
20 generally call it a foundation manager tax. It's an
21 additional tax being assessed on a manager of an
22 organization that removed -- knowingly removes those
23 funds as well.

24 Q. All right. So with those three taxes in mind,
25 and those are all delineated in this 4549-A?

1 A. They're summarized in the 4549-A, yes.

2 Q. Okay. And the net effect is the bottom line,
3 line 16, a balance due of \$80,980?

4 A. That's correct.

5 Q. And is that giving Mr. Sedaghaty a benefit
6 of -- up at line 1a, of \$24,000 loss that he asserted
7 from -- on his 1040?

8 A. Yes. That is giving him the benefit of a
9 \$24,000 loss from a business. I understand -- I believe
10 it was an arborist business from what I remember from
11 reviewing the documentation. It was later determined
12 that potentially that \$24,000 loss should not have been
13 allowable because the basis in the pass-through
14 corporation that we're talking about had been reduced to
15 zero, so that is something potentially that should not
16 have been included here, but was. Therefore, it's
17 actually reducing the amount of tax that would be
18 otherwise listed on line 16.

19 Q. So that's reducing -- giving him a benefit and
20 lowering his taxes?

21 A. That's correct.

22 Q. All right. So is the upshot of all this,
23 Mr. Wooten, that based on these adjustments and
24 considering this embezzlement theory, that
25 Mr. Sedaghaty's Form 1040 for the year 2000, this is

1 essentially adjusting that, and giving him the benefits
2 of the tax -- of the credits and the deductions he
3 asserted, but with the additional taxation based on the
4 embezzlement, that there's an \$80,980 balance due?

5 A. Not quite. There are actually two returns that
6 are being affected here, a Form 4720-A, which is the
7 return which the excess benefit transaction would be
8 reported on, as well as the Form 1040. The cumulative
9 effect on those two returns is the dollar amount that's
10 listed here, though, that's correct.

11 Q. All right. Now, you understand the -- where
12 those figures came from under tax law -- the basis --
13 the basis for that?

14 A. Yes, I do.

15 Q. Okay. If the assumptions changed somewhat,
16 Mr. Wooten, and if Mr. El-Fiki didn't intend it to be a
17 benevolent donation, that was embezzled by Mr. Sedaghaty
18 and Mr. al-But'he, but instead that he intended to fund
19 the mujahideen, in essence was a conspirator, would that
20 change the taxation issues?

21 A. Absolutely it would. Then potentially what we
22 would have is we would have a situation where the excess
23 benefit would be eliminated here. The -- or a good
24 portion of the excess benefit would be eliminated here.
25 The taxability on the Form 1040 would be eliminated.

1 However, we would have a situation where the nonprofit
2 organization would be potentially subject to revocation.
3 And their 990 return, which is a nontaxable return,
4 would be converted to an 1120 return, which is subject
5 to taxation. The --

6 Q. Okay. Hold on a second. Let's break that down
7 a little bit.

8 A. Sure.

9 Q. So 501(c)(3) tax exempt organizations file Form
10 990 annually with the IRS?

11 A. That is correct.

12 Q. But profitable -- but businesses file a Form
13 1120?

14 A. They file a Form 1120 depending on their
15 corporate structure. This organization would be subject
16 to filing an 1120.

17 Q. Okay. So if Mr. El-Fiki was intending to
18 donate to the mujahideen, are you saying that that could
19 have the effect of collapsing the entire tax exempt
20 nature of al-Haramain U.S. and convert the business to
21 one that has to file an 1120 with the IRS?

22 A. The contribution specifically for the purposes
23 of funding the mujahideen to this organization would be
24 a nonexempt transaction, which would result in the
25 proposal for revocation of the exempt status of this

1 organization. That, when that went through, would also
2 result in the conversion of the 990 to a Form 1120. The
3 receipts of the organization on that 990 then would turn
4 into what amounts to gross income on the Form 1120. And
5 that amount would then be taxed at corporate rates.

6 Q. Is that 34 percent?

7 A. It's a graduated -- excuse me, they're
8 graduated tables, but, yes, that's correct.

9 Q. Okay. Have you done some rough math on this,
10 Mr. Wooten, prior to your testimony today? And if you
11 altered those assumptions and went with Mr. El-Fiki was
12 intending to fund the mujahideen, would there be more or
13 less taxation owed?

14 A. I did a rough estimate of the amount of tax
15 that would be owed based upon the revocation of this
16 organization using some different assumptions that these
17 funds were coming in for nonexempt purposes, and the tax
18 that would be owed then by the organization upon
19 conversion would be up to possibly about \$180,000.

20 Q. Okay. That's far more than what's proposed in
21 this 4549, \$80,000?

22 A. That's correct.

23 MR. CARDANI: That's all I have. Thank you.

24 THE COURT: Cross.

25

1 CROSS-EXAMINATION

2 BY MR. MATASAR:

3 Q. Mr. Wooten, these calculations that you made
4 concerning the scenario that Mr. El-Fiki intended the
5 money to go to the Chechen mujahideen and, that,
6 therefore, the 990 would be converted to an 1120, when
7 did you make those calculations?

8 A. I actually had considered those previously but
9 had not done the calculations based upon the assumptions
10 that I was given. I made those calculations or, as I
11 said, I did an estimate of those calculations today.

12 Q. Today? First time?

13 A. Yes.

14 Q. There is no documents that you prepared that
15 you gave to Mr. Cardani concerning your claim in court
16 today that there is over \$100,000 in loss?

17 A. No, there is no document. I simply informed
18 him that based upon the -- that assumption that I --
19 since it may have been a question asked of me in court
20 today, I did a rough calculation and the tax could be up
21 to \$180,000.

22 Q. Let me first ask about the original theory,
23 which is that Mr. Sedaghaty -- well, I guess both
24 theories are based on the idea that Mr. Sedaghaty took
25 the money for himself; is that right?

1 A. No.

2 Q. The first one is?

3 A. The first theory is that he removed the funds
4 for a personal purpose.

5 Q. And that theory would simply have no effect
6 whatsoever if the assumption was that Mr. El-Fiki
7 intended the money to go to the mujahideen, right?

8 A. I'm not sure --

9 Q. That first theory.

10 A. I'm sorry, I'm not sure if I understand the
11 question.

12 Q. Okay. You have two theories of taxation here.
13 One is that Pete Seda embezzled the money?

14 A. Yes.

15 Q. And what is that theory -- what is
16 Mr. El-Fiki's intent -- how is Mr. El-Fiki's intent
17 relevant to that theory?

18 A. In that theory, Mr. El-Fiki's intent is for the
19 funds to come into a tax exempt organization. He then
20 makes the transfer of those funds into a tax exempt
21 organization, the tax exempt organization, whose purpose
22 is not specifically to fund terrorism, it actually
23 states in the tax exempt organization's articles of
24 creation that it stands against all forms of terrorism.
25 Therefore, since it is not an act of the organization,

1 it is an act of the person that removed those funds from
2 the organization for personal purposes.

3 Q. And that is your view even if Mr. Seda did not
4 use the money for his own personal purposes? He did not
5 buy a car, or put it in his bank account, or anything
6 like that, but that he simply gave the money to another
7 organization?

8 A. That is -- that is the view, yes. If I'm
9 understanding your question, yes, that is the view.
10 It's similar to a situation where, for example, an
11 individual made the payment for their child's college
12 tuition out of the organization instead of transferring
13 the funds directly to themselves, they did still receive
14 a benefit from that.

15 Q. Well, in that case that you are talking about,
16 they received a direct personal benefit, they didn't
17 have to pay their child's tuition. In this case, there
18 was no financial benefit to Mr. Seda; is that correct?
19 He achieved some sort of psychic benefit, the money went
20 somewhere, under your assumption, where he wanted it to
21 go?

22 A. If he felt that this was his personal
23 obligation, then he received something that would amount
24 to a financial benefit.

25 Q. That's what your basis -- I'm just trying to

1 find out the basis. That if he saw it as his personal
2 financial obligation, is that what is required?

3 A. I don't know if I can differentiate his
4 personal financial obligation from someone just feeling
5 it is just overall their personal obligation.

6 Q. Well, let me put it this way: If somebody were
7 to give money to a charity, and if the condition of
8 giving the money was that you changed the name of your
9 charity to my name, I gave money to a charity that maybe
10 wants to save the whales, and I wanted it to be called
11 the Lawrence H. Matasar Foundation, that's not a
12 personal financial benefit, but is that the kind of
13 benefit that you are talking about --

14 A. They are --

15 Q. -- would that be taxable to me if I did
16 something like that?

17 A. There is certainly some value to that benefit,
18 yes.

19 Q. So I would be taxed under that approach, is
20 what I'm saying?

21 A. It would depend on the value -- the perceived
22 value, yes.

23 Q. And what is the perceived value to Mr. Seda for
24 giving money to Chechens?

25 A. I don't believe that the perceived value is

1 anything other than the value of the funds that were
2 transferred. You perceived the value that you
3 transferred, the 150 or \$130,000, to the cause.

4 Q. So if I gave money to the Save the Whales for
5 \$150,000, that would be an excess tax to me?

6 A. In this circumstance we're talking about
7 something that is not a charitable activity. We're
8 actually talking, from the assumptions, we're talking
9 about here an illegal activity.

10 Q. I see. So it's based on, not the fact that he
11 took the money, but it's on where he sent it. If
12 Mr. El-Fiki gave the money, as he did, under the
13 assumptions that you gave, and Mr. Seda gave it to the
14 Red Cross, are you saying that then there would not be a
15 benefit?

16 A. I don't think we would be here today if that
17 had happened.

18 Q. That's not my question. My question is: If a
19 person takes money or redirects money from a charity
20 toward a purpose that is not in the charter, that is not
21 in the intent of the donor, if under those circumstances
22 the person who does so, the board member of the charity,
23 is subject to excess benefit tax, or any other tax up to
24 the \$80,000?

25 A. If someone made this transfer to an

1 organization that was a 501(c)(3) charity, then likely,
2 no, they will not be subject to that.

3 Q. Okay. So the purpose -- so the basis of your
4 opinion is not on the embezzlement, it's not on anything
5 other than the fact that the money went somewhere that
6 it shouldn't go?

7 A. The money was directed somewhere that it
8 shouldn't go by an individual, I suppose, yes.

9 Q. Is the requirement as far as where the money
10 goes that it be a 501(c)(3) or is it that it be
11 humanitarian?

12 Let's say the money was given to another
13 humanitarian cause that maybe isn't technically a
14 501(c)(3) organization. Maybe it'd be Save the Whales,
15 maybe it'd be a lobbying organization that lobbies for
16 Save the Whales, maybe it's something of that nature,
17 bandages for --

18 THE COURT: Whales.

19 Q. -- people -- for whales. Bandages for whales.

20 A. I'm sorry, I'm missing your point here, I
21 think. Are you saying that the distributions made from
22 exempt organizations in general, do they have to be to
23 another 501(c)(3) or can they be to a documented
24 humanitarian purpose? Is that what you're asking?

25 Q. No. I'm not understanding your point. What

1 I'm trying to figure out, what triggers the tax? Is the
2 tax triggered -- you are saying and the presentence
3 writer is asking for \$80,000 tax loss be awarded in this
4 case, which increases the sentence dramatically, what
5 I'm asking you is, is the basis of your opinion where
6 the money goes?

7 You said before if it went to the International
8 Red Cross, the tax would not be assessed, right? Didn't
9 you testify to that? If instead of the Chechen
10 mujahideen, it went to the American Red Cross, it would
11 not be assessed, right?

12 A. I believe I said that, okay.

13 Q. Okay. And so if not the American Red Cross,
14 let's say it went to another organization, the Whale
15 Band-Aid Fund or something else which is not -- they
16 have no tax status, nothing, if it went to an
17 organization like that, is the donor -- or is the board
18 member who directs it there subject to this tax you are
19 talking about?

20 A. If the board member is directing it to that
21 location of their own accord without the approval or
22 consent of the organization for their own purposes, then
23 yes.

24 Q. And why isn't that true for the Red Cross?

25 A. The Red Cross would be another charitable

1 501(c)(3) organization.

2 Q. Yeah. But it has nothing -- with the things
3 you just said, it's his own idea, it's not part of the
4 charter, why do you get a pass for that?

5 A. Simply put, I believe that the differentiation
6 here, we're talking about theoreticals, but the
7 differentiation that I would put on it, if the funds are
8 going to another organization that can -- that would
9 then be documenting that it used those funds for
10 charitable purposes.

11 Q. You spoke of the foundation management tax.

12 A. Yes.

13 Q. And you are aware that there -- as you talk
14 about, there are tax consequences that you've testified
15 under the second of the two scenarios, to a private
16 foundation that contributes money to an improper
17 organization, right? Do you know the number? Do you
18 know the number of the regulation?

19 A. You're talking about a private foundation now?

20 Q. Yes, yes. When you talked about the foundation
21 manager tax.

22 A. What I was referring to is the additional tax
23 under IRC Section 4958 on an officer of an organization,
24 yes. I don't believe that has to do with private
25 foundations, but yes.

1 Q. Didn't you call it the foundation management
2 tax?

3 A. I may have misspoken and used the wrong term.

4 Q. Well, isn't it a fact that there are rules for
5 private foundations that would impose a tax in
6 circumstances similar to yours, but there are no such
7 rules for public charities?

8 A. 4958 does impose excess benefit transactions on
9 public charities. If you are asking me if there's a
10 mirror to the private foundation taxes for public
11 charities, no.

12 MR. MATASAR: Nothing further.

13 THE COURT: Do you have anything more?

14 MR. CARDANI: No, I have nothing else.

15 THE COURT: Thank you. You may step down.

16 MR. MATASAR: Your Honor, could we just have
17 maybe 10 minutes so I can result with Mr. Owens before I
18 call him to make his testimony as quick as possible?

19 THE COURT: Yeah.

20 MR. MATASAR: I'll leave for five minutes, Your
21 Honor.

22 THE COURT: We'll have a short recess.

23 (Recess: 1:59 until 2:05 p.m.)

24 THE COURT: Your next witness, please.

25 MR. MATASAR: Marcus Owens. Can you hear us,

1 Mr. Owens?

2 MR. OWENS: Yes, I am.

3 THE CLERK: Mr. Owens, would you please stand
4 and raise your right hand.

5 (The witness was sworn.)

6 THE CLERK: Please state your full name and
7 then spell your name for the record.

8 THE WITNESS: My name is Marcus Sherman Owens.
9 That's spelled M-A-R-C-U-S. Middle name Sherman,
10 S-H-E-R-M-A-N. Last name Owens, O-W-E-N-S.

11 DIRECT EXAMINATION

12 BY MR. MATASAR:

13 Q. Mr. Owens, you testified at the trial in this
14 case, did you not?

15 A. Yes, I did.

16 Q. And I'd ask just the court and counsel to
17 accept all of Mr. Owens' qualifications from the trial
18 here so I need not requalify him.

19 THE COURT: Please don't. Go ahead.

20 BY MR. MATASAR:

21 Q. But in short, Mr. Owens, you were the head of
22 the Exempt Division of the Internal Revenue Service,
23 correct?

24 A. The Exempt Organizations Division, yes.

25 Q. And you have submitted two memoranda as part of

1 the sentencing process, correct? One is eighteen pages
2 and the other was two pages?

3 A. Correct.

4 Q. And you were present here today during the
5 testimony of Mr. Wooten; is that right?

6 A. By telephone, yes.

7 Q. Correct. So I'm going to ask you in general to
8 address the two circumstances that were relied upon by
9 Mr. Wooten in his determination that there would be a
10 tax loss in this case.

11 First of all, I'm going to ask you to address
12 the circumstance where the donor, Dr. El-Fiki, intended
13 this \$150,000 to go to, let's say, Chechen widows and
14 orphans, and that it was instead sent to the Chechen
15 mujahideen. Do you understand my general question,
16 first?

17 A. Yes, I do.

18 Q. And could you describe the tax consequence --
19 well, let me first ask the conclusion. In your view
20 would such a fact pattern result in a loss to the
21 Internal Revenue Service, a financial loss?

22 A. No, it would not.

23 Q. Could you explain why it would not?

24 A. Well, the contribution that was given was
25 clearly under the assumption earmarked for a different

1 organization for relief in Chechnya. It was not
2 intended by the donor to go to al-Haramain Oregon, but
3 instead was intended to be used elsewhere by another
4 organization. So the amounts were transmitted to
5 al-Haramain Oregon as agent for the transshipment, if
6 you will, of the funds to al-Haramain Saudi Arabia, and
7 then on to Chechnya. The --

8 Q. And, again, Mr. Owens, this is the circumstance
9 where the money is ultimately intended by the donor to
10 be used by Chechen widows and orphans.

11 A. That's right, I understand.

12 Q. Okay. So go ahead.

13 A. So the funds so transmitted are not income
14 under Internal Revenue Service interpretations of the
15 tax law under Section 61, so they don't flow into the
16 income of al-Haramain Oregon and are not within the
17 control, if you will, of al-Haramain Oregon.
18 al-Haramain Oregon is simply the agent for transmission
19 of the funds. So the transmission of the funds doesn't
20 give rise to any particular tax. Transmission of a
21 contribution is not going to support revocation of tax
22 exemption where the funds are ultimately intended to be
23 used for an appropriate charitable purpose. And it
24 certainly doesn't support any individual tax
25 consequences either of an income tax or an excise tax

1 nature on the officials who were involved in the
2 assumption of a -- the assumption that the ultimate
3 recipient is for a charitable purpose.

4 Q. Well, didn't, under this scenario, Mr. Seda
5 embezzle this money and take it away from the Chechen
6 widows and orphans and embezzle it and determine himself
7 that it should go to Chechen fighters and doesn't that
8 count as a benefit to him of \$150,000?

9 A. As I understand, that's the second scenario
10 that you are presenting now?

11 Q. No, that's the first one where --

12 A. Where Mr. Seda redirected --

13 Q. Yes, yes. El-Fiki intended it to go one place,
14 Mr. Seda redirected it somewhere to a place that he
15 wanted it to go to, not Mr. El-Fiki wanted it to go to.

16 A. If it's simply a redirection of funds, that
17 redirection, assuming the ultimate recipient or the
18 ultimate purpose for which the funds were used was a
19 charitable purpose, would not jeopardize tax exempt
20 status of the U.S. charity, nor would it create any sort
21 of income or excise tax obligation on Mr. Seda --
22 Sedaghaty.

23 Q. I'm not asking about the effect on the charity.
24 I'm just asking the effect on Mr. Sedaghaty, on his
25 personal taxes. It's not some sort of embezzlement

1 which would subject him to excise taxes?

2 A. That is correct. That is correct. It's simply
3 a redirection to a different charitable purpose.

4 Q. And doesn't he get a benefit by getting it --
5 by making a decision that it goes to his own personal
6 purpose?

7 A. Under federal tax law, there is no tax
8 recognition of that benefit. That's a longstanding
9 position of the Internal Revenue Service set out in
10 revenue rulings which have been approved by the Treasury
11 Department. There simply is no tax value in being able
12 to indicate or identify recipients of charitable giving.
13 It's -- it is simply a tenuous, ephemeral benefit
14 without tax value.

15 Q. A kind of psychic benefit?

16 A. Correct.

17 Q. What about a benefit, say somebody gives money
18 to an organization with the idea that the organization's
19 name would be changed to reflect the donor?

20 A. That also is a psychic or ephemeral or tenuous
21 benefit, and, in fact, is the fact pattern in a Revenue
22 ruling that has been issued by the Internal Revenue
23 Service from the Treasury Department.

24 Q. So that specifically determined that that
25 sort -- that psychic benefit is not the kind of thing

1 that there is a tax on?

2 A. Correct. And a Revenue ruling is approved both
3 by the Internal Revenue Service and the Treasury
4 Department as an accurate interpretation of those
5 agencies' views of the Internal Revenue Code.

6 Q. What about if the money -- different -- the
7 second scenario -- was intended by Dr. El-Fiki to go to
8 the Chechen mujahideen, and Mr. Sedaghaty then gave it
9 to the mujahideen, I take it under such a circumstance,
10 Mr. Seda could never be seen to have embezzled that
11 money, is that fair to say, if he just sent it to where
12 it was intended to go?

13 A. That is correct.

14 Q. And you heard Mr. Wooten say today that if
15 that -- those were the facts, that al-Haramain would
16 have lost its tax exempt status, and then would have
17 been deemed to be a corporation and would have had to
18 file an 1120, first of all, is that part of his analysis
19 correct?

20 A. That part is generally correct.

21 Q. Okay.

22 A. A payment as part of conspiracy to support
23 terrorism would jeopardize the tax exempt status of the
24 charity involved.

25 Q. And if the tax exempt status were revoked and

1 they were declared an 1120 -- declared a corporation,
2 they'd have to file an 1120; is that part also correct?

3 A. That is correct.

4 Q. But the question then becomes -- the major
5 question becomes is the \$150,000 income to the
6 corporation, and would they have to pay tax on it?

7 A. The answer to that question is no, is not
8 income. It would be excluded from the calculation of
9 income by Section 102, 102 of the Internal Revenue Code,
10 which excludes gift income from taxable income.

11 And that analysis, incidentally, was part of
12 the holding in the case of *Branch Ministries versus*
13 *Rossotti* involving the revocation of a church that
14 engaged in political campaign activity. That is a bad
15 use of charitable money. And the court acknowledged
16 that the government had no ability in that case to tax
17 the church; that the gifts received by the church, even
18 though they were used for an improper charitable
19 purpose, were simply not taxable income in the hands of
20 the church. The Internal Revenue Code did not reach
21 those amounts.

22 Q. And you are familiar with the *Bob Jones*
23 *University* case as well, a Supreme Court case?

24 A. Yes, I am, and I was personally involved in
25 that case.

1 Q. And in that case essentially the university was
2 acting in a racist manner, and their tax exemption was
3 taken away. But as I understand it, the directors
4 didn't have to pay any personal tax; is that fair to
5 say?

6 A. That is correct. The university lost its tax
7 exempt status because it used its funds to impose a
8 racially restrictive set of rules on students and
9 faculty. And the United States Supreme Court said that
10 violated the requirements for 501(c)(3) status, for tax
11 exempt status, but the only tax that arose from that was
12 an income tax applicable to the university.

13 Now, university of course has earned income.
14 It has tuition payments which would be taxed. It would
15 not be excluded by Section 102.

16 Q. Mr. Owens, you've been involved, have you not,
17 in the Internal Revenue Service's consideration of
18 whether or not the excise tax benefits would be expanded
19 to create -- expanded beyond where it is now; is that
20 right?

21 A. That is correct.

22 Q. Could you tell the court about that process?

23 A. Yes. The process essentially began in 1993
24 with a series of hearings before the House Ways and
25 Means Oversight Subcommittee. I participated in those

1 hearings along with officials from the Treasury
2 Department and the Internal Revenue Service. From those
3 hearings, Congress began drafting a penalty excise tax
4 modeled on the excise taxes -- the penalty excise taxes
5 that private foundations pay, and which have been part
6 of tax law since 1969.

7 By way of background, the Congress enacted
8 taxes on private foundations that used money for the
9 personal economic benefit of the insiders, and that was
10 enacted in Section 4941. That was the model for Section
11 4958.

12 In addition, there were other excise taxes
13 enacted in 1969, including one under Section 4945 that
14 taxes bad grants, that is taxable expenditures.
15 Congress did not create a similar tax for public
16 charities when it enacted Section 4958 in 1996.
17 Congress only looked to Section 4941.

18 At the time I was director of the Exempt
19 Organizations Division. And I and my immediate
20 supervisor, the assistant commissioner for Employee
21 Plans and Exempt Organizations, as is the case were
22 involved in discussions with the Treasury Department,
23 and the staffs of the oversight subcommittee and the
24 Joint Committee on Taxation for purposes of working out
25 the actual statutory language that subsequently was

1 enacted of Section 495.

2 As IRS officials, I and my supervisor made a
3 strong case to the Treasury Department that the statute
4 should be extended to tax private benefit transactions,
5 which would have been a tax that would have reached a
6 bad grant along the lines of what Mr. Wooten was
7 discussing. However, the Treasury Department adamantly
8 refused to go forward. Congress also declined to enact
9 that sort of tax. And so the only tax that was enacted
10 in Section 4958 is one on economic benefits that accrue
11 directly to the individual in control of the
12 organization. And it is modeled after Section 4941, the
13 excise tax on self dealing that has the same effect on
14 private foundations. It was not modeled under Section
15 4945, which taxes bad grants by private foundations.

16 So the statute, Section 4958, was simply never
17 intended by Congress to be convertible into a tax on bad
18 activities of an organization. It only reaches those
19 transactions that rebound to the economic benefit, the
20 clear economic benefit of the individual who is in the
21 position of control, and uses those assets to his own
22 personal benefit.

23 MR. MATASAR: Thank you, Mr. Owens. I have no
24 further questions.

25 THE COURT: Cross.

1 CROSS-EXAMINATION

2 BY MR. CARDANI:

3 Q. Mr. Owens, this is Chris Cardani. We -- I
4 cross-examined you during trial.

5 A. Yes, you did.

6 Q. Yes. Now, on the scenario number one, where
7 it's given by Mr. El-Fiki for genuine humanitarian
8 relief, Mr. Sedaghaty gets it and sends it off to Saudi
9 Arabia, your testimony in criticizing Mr. Wooten's
10 numbers, the IRS's numbers, if I understand it
11 correctly, in essence, resurrects your trial testimony
12 concerning the earmark defense; is that a fair
13 statement?

14 A. That is a fair statement.

15 Q. And that's a -- one we spent a lot of time
16 during the trial and you are saying that if it was an
17 earmark, Mr. Seda really had no control over the
18 disposition of those funds, correct?

19 A. Correct.

20 Q. And so if he gave \$21,000 to Mr. al-But'he, not
21 for humanitarian purposes but to be put in the personal
22 account of Mr. al-But'he, that would show some type of
23 control over those funds, would it not?

24 A. It depends on the reason the funds were
25 transferred into his account. For example, if they were

1 transferred into Mr. al-But'he's account in order to
2 facilitate transshipment of the money to al-Haramain
3 Saudi and subsequently to Chechnya, that would be an
4 appropriate part -- part of that same purpose.

5 If the funds were, in other words, put into the
6 account as a similar agency relationship en route to the
7 ultimate disposition of the whole amount, it would be --
8 it would not be a diversion for the personal benefit of
9 Mr. al-But'he.

10 Q. Okay. And your understanding is that it costs
11 about \$40 to wire transfer money from the United States
12 to Saudi Arabia; is that right?

13 A. I believe that's the figure.

14 Q. Now, you talked about giving money for
15 charitable purposes. Can we agree that giving money to
16 the mujahideen to fund acts of violence is not a
17 charitable purpose within the understanding of the
18 Internal Revenue Code?

19 A. Yes, we can agree on that.

20 Q. Then into scenario number two, if the intent by
21 Mr. El-Fiki was to fund the mujahideen, I need some help
22 understanding this testimony, but you are saying that it
23 wouldn't -- it may jeopardize the 501(c)(3) nature of
24 the company, probably would, and if it did collapse into
25 a taxable entity, there would be no income to the

1 company based on the fact that this was a gift; is that
2 right?

3 A. Not quite. There would be no taxable income to
4 the revoked charity. And the reason for that is Section
5 102 of the Internal Revenue Code excludes gift income.
6 And as I indicated, that's exactly the scenario in the
7 *Branch Ministries versus Rossotti* court case involving
8 revocation of a church for political campaign
9 intervention.

10 Q. So to help understand this, if Mr. El-Fiki or
11 let's just say a donor was a drug dealer and had drug
12 income and contacted a charity of the United States and
13 said I want you to accept my drug dealing money and send
14 it for whatever purposes, and this collapsed the
15 charity, caused them to be revoked, are you saying that
16 that's not a taxable income to the company?

17 A. I didn't hear you say that the drug dealer made
18 a free will gift to the charity. I heard you say that
19 he -- as he paid the money, he told the charity to
20 accept his money. Free will gifts are excluded from
21 income of the recipient under Section 102 regardless of
22 the source of the money.

23 Q. Even illegal income, sir?

24 A. If the illegal income is not earned by the
25 charity, in other words, if the charity simply receives

1 a gift that turns out to have been obtained illegally by
2 the donor, that doesn't change the tax treatment in the
3 hands of the charity.

4 Q. So if Mr. El-Fiki was kind of let's say just
5 say in on it, that there was this agreement to fund the
6 mujahideen to commit acts of violence, and sent money
7 over here in the form of \$150,000 gift, and it was not
8 an earmark, and it was used by Mr. Sedaghaty and
9 Mr. al-But'he to fund the mujahideen, and part of the
10 money was diverted to Mr. al-But'he and put in his
11 personal account, are you saying that if there was
12 revocation, there'd be no taxable consequences to that
13 transaction?

14 A. There would be taxable consequences in the form
15 of the charity would have to file a Form 1120, but the
16 particular gift income from Mr. El-Fiki would not be
17 taxed.

18 If the charity had earned income of some sort,
19 and in my earlier testimony this afternoon I described
20 how Bob Jones University was taxed on its tuition income
21 because that was earned income, if there was that income
22 in the hands of the charity, there would be whatever
23 income tax would be due after appropriate expenses had
24 been deducted.

25 Q. Okay. But if this was not an earmark, not a

1 passthrough, we can agree that there would be taxation
2 to Mr. Sedaghaty, correct?

3 A. No, there would be no tax to Mr. Sedaghaty.

4 Q. If it was not a passthrough or an earmark?

5 A. If the money was given as part of a conspiracy
6 by Mr. El-Fiki or at least an intention by Mr. El-Fiki
7 given to al-Haramain Oregon to be then used to fund
8 terrorism by the mujahideen, and it was passed through
9 to Mr. al-But'he for that purpose, there would be no tax
10 consequence personally to Mr. Sedaghaty. There would be
11 consequences for the charity involved, but not for him
12 personally under federal tax law.

13 Q. Okay. And that's the scenario number two that
14 we've described today. But if it's scenario number one
15 where Mr. El-Fiki is making an humanitarian gift, and
16 there is a diversion that's not a passthrough, not an
17 earmark, then there would be taxation to Mr. Sedaghaty,
18 correct?

19 A. No. There would be no taxation to
20 Mr. Sedaghaty under either scenario. There would only
21 be tax consequences in the event of a bad use of the
22 money, that is to support terrorism, which would support
23 revocation of the charity. And then the only tax would
24 be if there was earned income in the hands of the
25 charity. And certainly would not reach the contribution

1 from Mr. El-Fiki.

2 Q. But if there was an embezzlement, sir, okay, in
3 scenario number one, there was an embezzlement by the
4 director of the 501(c)(3), not a passthrough, not an
5 earmark, but an embezzlement of funds, that would lead
6 to personal taxation, would it not?

7 A. A theft would lead to personal taxation, but
8 the elements of theft are that the funds are taken into
9 the possession of the individual and become their asset,
10 their property.

11 MR. CARDANI: Okay. That's all I have. Thank
12 you.

13 MR. MATASAR: Nothing further, Your Honor.
14 Thank you, Mr. Owens.

15 THE COURT: Thank you, Mr. Owens. Good day.
16 Your next witness, please.

17 MR. CARDANI: Judge, we have no other
18 witnesses.

19 MR. WAX: We don't have any witnesses, Your
20 Honor. At some time later on in the proceeding,
21 Mr. Seda's wife would like to address the court, but
22 that, I think, would come later on.

23 THE COURT: All right.

24 MR. MATASAR: And we also have a short video,
25 Your Honor, about a ten-minute video we want to play,

1 but I think --

2 THE COURT: Is that the one you submitted as --
3 on your CD?

4 MR. MATASAR: Yeah. It's a short version, even
5 shorter than that.

6 THE COURT: I watched that already. Showed
7 some tree activities and delivering water to residents
8 in Ashland and so on.

9 MR. MATASAR: Yes, Your Honor.

10 THE COURT: I looked at it yesterday as part of
11 my preparation to do this now. If you want to --

12 MR. MATASAR: Well, let's do the legal
13 argument, and then we'll take this matter up in a
14 moment. Let's just move along, if that's okay.

15 THE COURT: Uh-huh.

16 MR. CARDANI: Judge, all that I have remaining
17 is just some arguments on sentencing and a request for
18 some findings on some of the contested issues.

19 THE COURT: All right.

20 MR. CARDANI: May I proceed, Judge?

21 THE COURT: Yes.

22 MR. CARDANI: First of all, Judge, in terms of
23 the challenges to the presentence report, the court
24 needs to make findings on -- starting in order -- tax
25 loss. And the guidelines, as I said earlier, do talk

1 about when you have a difficult situation where you
2 can't nail down taxation, the court's allowed to make a
3 reasonable estimate based on the available evidence.

4 And this Mr. El-Fiki's intent has been a big
5 unknown since the beginning of this case. He wasn't
6 here as a witness. And we went back and forth at trial
7 on what he did intend and what he didn't intend. But
8 the fact is we don't know.

9 And if we assume that he made this for
10 benevolent purposes and sent it to the United States,
11 there was plenty of information to show -- to allow the
12 jury to refuse to accept Mr. Owens' earmark argument.
13 And, again, that was the basis for the motion for
14 judgment of acquittal filed by the defense, that was
15 CR478.

16 We filed a response to that in 486. And we
17 outlined some of those reasons why the jury was entitled
18 to reject the earmark defense. And that would include
19 the fact that Mr. Sedaghaty treated this money as his
20 own before it left the country by contacting other aid
21 organizations himself or indirectly through his other
22 employees using his other business, the Qur'an
23 Foundation, things that are inconsistent with what his
24 requirements were for an earmark. And that is, if it's
25 an earmark, he has no control, it's got to go right out.

1 And as the court knows, the easiest way to do
2 that, and the best evidence of -- that would have
3 reflected some type of earmark would have been if
4 Mr. Sedaghaty quickly wired out that money, or at any
5 time wired that money out for \$40 to Saudi Arabia or
6 wherever rather than go through this elaborate attempt
7 to conceal the movement of the money, spending \$21,000,
8 diverting it to Mr. al-But'he. It ends up in the Al
9 Rajhi Bank and Mr. al-But'he's personal bank account.
10 And then the money itself gets reduced to cash, smuggled
11 out of the country, no forms filed on the way out, so on
12 and so forth.

13 So the jury was entitled in our opinion to
14 reject the earmark defense and did so. And that
15 affects, somewhat, the tax calculations. And in our
16 estimation, the court is entitled to accept the figure
17 of \$80,980 not as a hard and fast tax figure that would
18 be used in an audit necessarily, but for purposes of
19 estimating the tax loss for purposes of the advisory
20 guideline calculations.

21 So we would ask first that at some point the
22 court make findings on the tax loss figures. And if the
23 court accepts the figures in the presentence report, in
24 the 2001 guidelines, that equates to a base offense
25 level of 14.

1 MR. MATASAR: Do you want to hear our response
2 to each issue, Your Honor, as he goes or are we going
3 to --

4 THE COURT: No.

5 MR. MATASAR: No? He'll make all his points.

6 THE COURT: No.

7 MR. CARDANI: Then, Judge, the next issue that
8 is contested and we need findings on is the
9 recommendation of the presentence report for a two point
10 enhancement under the advisory guidelines for
11 sophisticated concealment.

12 I'm not going to belabor that either, but on
13 page 5 and 6 of the government's sentencing memo, we
14 talk about the various evidence that supports the
15 sophisticated concealment enhancement: Offshore bank
16 accounts, smuggling cash, lying to an accountant to hide
17 the transaction, filing a Form 990 ultimately, so on and
18 so forth. We think that those are clearly facts that
19 the court can rely on to impose the sophisticated
20 concealment enhancement.

21 The next one is the two point enhancement for
22 obstruction. And, again, the presentence report
23 recommends this, and the government concurs. It's been
24 challenged and we'll need a finding.

25 On page 7 of the government's sentencing memo,

1 we again cover some of the evidentiary support for the
2 obstruction, but it involves these two receipts that
3 were provided to the government during the
4 investigation, some of them emanating from Saudi Arabia
5 at the time that Mr. Sedaghaty was overseas. He signed
6 both of these receipts, as did Mr. al-But'he apparently,
7 and they purport to represent a transaction that never
8 occurred.

9 And we know that -- from the various reasons
10 listed on page 7, page 8, and in the testimony this
11 court has heard repeatedly in the run up to trial and
12 during trial, that those receipts are false, they were
13 provided to the investigators, to the government that
14 is, in response to grand jury subpoena. And
15 Mr. Sedaghaty's involvement in that warrants a two point
16 enhancement for obstruction.

17 The next one, again, we'll need a finding on,
18 is the application 3A1.4, the so-called terrorism
19 enhancement. And if I can take aside for a moment, we
20 agree for purposes of today's hearing that these
21 findings should be based on a clear and convincing
22 evidentiary standard, certainly for the terrorism
23 enhancement and the tax loss under Ninth Circuit law,
24 that appears to be the appropriate burden of proof.

25 Page 12 of the government's sentencing

1 memorandum talks about not only the legal basis for it
2 but also the factual basis for it. And the legal basis
3 for it is that the circuits are in agreement now, that
4 if the court finds that Mr. Sedaghaty in conducting the
5 criminal activity that he's been convicted of now, if he
6 did these acts with an intention to promote a federal
7 crime of terrorism, then the enhancement is appropriate.

8 Now, the defense has spent a lot of time
9 objecting to this in their paper and again today, but
10 they keep trying to focus on the filing of the tax
11 return as the, in essence, only criminal act that
12 Mr. Sedaghaty participated in. And that's just not the
13 case. He was convicted of conspiracy that started when
14 Mr. El-Fiki sent that money in way back in early 2000,
15 and then all of the elaborate attempts to conceal that
16 from the government.

17 It was a continuing set of criminal activity
18 that culminated in the filing of the false tax return,
19 but we believe that the activity that the court should
20 focus on in making the findings on the enhancement for
21 the terrorism 3A1.4 should focus on all of that
22 underlying activity, because there Mr. Sedaghaty and
23 Mr. al-But'he best expressed their intent to promote the
24 crime of terrorism. It was everything about funding the
25 Chechen mujahideen that the Russians call terrorists,

1 but in trial referred to them as mujahideen. The court
2 knows from Mr. Kohlmann in the *Daubert* hearing,
3 Mr. Kohlmann at trial, Mr. Kohlmann's report, which
4 we've offered, as well as the Russian testimony, and all
5 of the evidence in this case that the court received,
6 that Mr. Sedaghaty clearly had an intent to fund the
7 mujahideen.

8 And in terms of whether it was to buy weaponry
9 or to support the mujahideen for tents, clothing,
10 medicine, it's all for the good of the order. And if
11 it's done to affect Russian policies, the Russian
12 populace, things along those lines, those are violations
13 of 18 U.S.C. 956 and 18 U.S.C. 2339A, and so those are
14 the two crimes that we've identified, and in the
15 presentence report those -- at least one of those
16 crimes, the 2339A, material support of terrorism is the
17 underlying crime of terrorism that the crimes of
18 conviction were intended to promote.

19 So if the court finds -- and we believe that
20 the jury did -- that Mr. Sedaghaty's intent was not
21 benevolent but to fund the mujahideen in their effort to
22 retaliate against the Russians, to commit acts of
23 violence against the Russian, so on and so forth, then
24 we think by any standard the enhancement for 3A1.4 is
25 appropriate.

1 Now, in terms of the net effect of that, Your
2 Honor, it's a significant enhancement. There is no
3 question about that. It jacks the offense level up by,
4 I believe, 12 levels, and also sets a minimum of offense
5 level, I believe, 32. So it's a significant
6 enhancement. But because Mr. Sedaghaty's statutory cap
7 is 8 years, that is 96 months, then the real net effect
8 of that terrorism enhancement is substantially blunted
9 by the statutory cap. And I did want to point that out.

10 THE COURT: Actually, isn't it a 16-level
11 increase?

12 MR. CARDANI: Thank you. But it brings it up
13 to an offense level 32, which is 121 to 151, but it also
14 says Criminal History Category VI. So if it weren't for
15 the statutory cap, what I'm trying to say is the
16 terrorism enhancement would put the advisory guidelines
17 at 210 to 262. And what I'm saying is because the
18 statutory cap is 96 months, the effect of the terrorism
19 enhancement is substantially reduced by this statutory
20 cap.

21 With -- so we would ask that the court adopt --
22 accept all of the recommendations in the presentence
23 report. And if that's the case, then what we have is 14
24 for the tax loss, 2 for the obstruction, sophisticated
25 means, and the terrorism enhancement, you are up at the

1 262 to 327, but the statutory maximum is 96 months.

2 Now, does the court wish me to address the
3 3553(a) factors now or after the defense has had an
4 opportunity to make its presentation?

5 THE COURT: I think you can do it now as far as
6 I'm concerned. I think what I've decided to do -- I do
7 want to take the allocution today, because I want
8 everything in front of me, but I'm probably not going to
9 impose the sentence this afternoon. I'm probably going
10 to have a couple of week delay, because there -- the
11 findings are complicated enough here that I think they
12 should be prepared in writing before the actual
13 sentencing, so that's what I intend to do. Go ahead.

14 MR. CARDANI: In terms of the 3553(a) factors,
15 Your Honor, the court knows that the sentencing
16 guidelines are not mandatory, they are advisory, one
17 factor, a starting point, for the court to consider.

18 In terms of recognizing the peaceful work that
19 Mr. Sedaghaty has done in his past, as I said in the
20 sentencing memo, that shouldn't be ignored. It
21 shouldn't be rejected. It's true. And all of the
22 witnesses that testified on his behalf at trial and that
23 have come up with him today and support him have seen a
24 very different side to him. And he's done some very --
25 some good things down in the Ashland area promoting

1 multicultural atmosphere, differing religions, and an
2 atmosphere of acceptance, which are contrary to the type
3 of things that were revealed during trial.

4 And what I think that speaks to is that he has
5 a side to him that is peaceful and law abiding on one
6 hand, but in terms of promoting the cause overseas in a
7 fight that the mujahideen were involved in, I think what
8 we saw from the trial is that Mr. Sedaghaty, if he could
9 get away with it, is certainly willing to throw his
10 efforts for the cause, and he got involved in accepting
11 money from al-Haramain, and got brought into the
12 ideologue, the extreme ideologue that's involved in
13 al-Haramain's causes that the court has seen so much of
14 during trial, and knowingly accepted that, knowingly
15 promoted that, the prison literature, all of the stuff
16 in the computers, and the Russian wife helping out
17 translating for these radical Web sites, so on and so
18 forth, his eyes were wide open, Judge, in terms of
19 getting involved with al-Haramain and promoting its
20 causes. And that's what this trial is about and that's
21 what he needs to be held accountable for.

22 So we would ask that the court make the
23 findings supporting the enhancements and recognize that
24 regardless of the findings, if the -- that the statutory
25 maximum is 96 months, we think that that is a fair

1 sentence for the conduct he engaged in.

2 I also want to address the repayment of legal
3 fees issue at some point. Do you want me to hear (sic)
4 it?

5 THE COURT: Yes.

6 MR. CARDANI: In our sentencing memo, we
7 identified that early on in this case the court got a
8 letter after Mr. Sedaghaty received free counsel from
9 Mr. Matasar and Mr. Wax, the court received some type of
10 letter, and the CR's are identified. CR 20 -- excuse
11 me, some type of letter was sent to the court. We
12 weren't part of that. It's docketed under seal, but it
13 led to a minute order imposed by the court, which is
14 CR61, and this court ruled that "the defendant is
15 ordered not to access or disburse or cause to be
16 disbursed any funds in the trust accounts of any of the
17 attorneys identified in Mr. Wax's letter to the court
18 dated 25 October 2007. The court requires that these
19 sums and other assets identified in the financial
20 affidavit attached to that letter be preserved and
21 remain available for consideration of repayment of funds
22 paid pursuant to the Criminal Justice Act for costs of
23 representation in this case."

24 We're there now, Judge. And any funds that
25 were identified by the court or any other assets that

1 were alluded to should be deemed funds available under
2 18 U.S.C. Section 3006A(f) as funds that are presently
3 available to help reimburse the government for the
4 considerable amounts of money that have been expended to
5 represent him.

6 And the case law supporting that, the court
7 needs to make findings that he does have the present
8 ability to pay. And so there seems to be some type of
9 link between money that was posted for his bail, \$58,000
10 at one point, and some of the money that came in to the
11 attorneys.

12 If that's the case, certainly that money which
13 is being held on to by the clerk are funds that are
14 presently available, at the very least, for partial
15 reimbursement to the government for legal fees. But
16 also anything else that the court may find in addition
17 to that as reflected in its minute order would likely
18 also be presently available for reimbursement.

19 If I may have a moment to confer with counsel.

20 THE COURT: Yes.

21 (Discussion held off the record.)

22 MR. CARDANI: That's all I have, Judge, unless
23 the court has any questions.

24 THE COURT: I don't. Go ahead.

25 MR. WAX: Thank you, Your Honor. Our plan

1 would be for me to go through the list of the legal
2 issues that we believe we need a ruling on; Mr. Casey
3 will then address more specifically the terror
4 enhancement; Mr. Matasar will address the tax loss and
5 the 3553(a) factors.

6 In terms of the legal issues, the discovery
7 motion with respect to Ignatchenko, I believe now has
8 two additional pieces that arose from his testimony.

9 We had urged the court not to hear his
10 testimony. We now urge the court to strike his
11 testimony. We urge the court to do so on several
12 grounds. One, the inherent unreliability. Second, in
13 his testimony, he refused to answer a number of the
14 critical questions asserting a Russian state secret
15 privilege. Clearly, the lack of availability of the
16 tapes and any notes of his alleged review of the tapes
17 is central to the credibility question of whether any
18 such tapes ever existed; and if so, who was on them; and
19 if so, what was said.

20 Second, the testimony should be stricken
21 because it violates the rights of confrontation and the
22 right to due process. And interestingly, Your Honor, we
23 believe that his acknowledgement that his participation
24 with the United States government in this joint task
25 force brings into play in terms of the discovery the

1 cases that we cited, including U.S. v. Bryan (phonetic)
2 out of this district in which the government is
3 responsible for providing discovery when there is a
4 joint investigation, and the Classified Information
5 Procedures Act. This court has not had the opportunity
6 with respect to Ignatchenko to review, as it would with
7 respect to any United States classified material, to
8 determine what the defense needs access to. So when he
9 says this is a joint group, and then asserts a state
10 secret privilege, the government should not be permitted
11 to proceed, and the defense cannot be left in the
12 position in which we are where we cannot effectively
13 challenge the testimony.

14 The next issue that we believe the court needs
15 to rule on, we have alleged a violation of the
16 Classified Information Procedures Act with respect to
17 government sentencing Exhibit 3. As you recall earlier
18 on in the case, we were provided this unclassified
19 summary of material that discusses Sami Al-Sanad. Our
20 understanding is that was provided to us because it was
21 understood either by the court or by the government to
22 be exculpatory.

23 What we now have is the government relying on
24 that unclassified summary in this sentencing proceeding
25 in a situation in which they acknowledge they have a

1 burden by clear and convincing evidence.

2 As we searched the case law under CIPA, we
3 found no situation in which anything of this nature has
4 ever occurred. And we do not believe the government can
5 be permitted to use against the defendant under the CIPA
6 that unclassified summary.

7 We believe that there are two options: Either
8 provide -- three options, actually: Provide us the
9 classified material for our review in an appropriate,
10 secure manner so we can determine what is necessary to
11 preserve Mr. Seda's confrontation and compulsory process
12 and due process rights; or preclude the government from
13 doing what it is doing, which is parsing that document
14 and saying, Judge, please accept as true what we say
15 about Abu Umar, and then look at all these other
16 circumstances that we present you about Abu Umar that
17 says he's a bad guy, and, Judge, ignore the one piece of
18 that document that relates to the charges in this case
19 where Sami Al-Sanad is reported to have said this money
20 went for humanitarian purposes in Chechnya.

21 We just don't see how they can have it both
22 ways. We think it violates CIPA. We think there's an
23 estoppel argument, confrontation, due process, and
24 compulsory process. So we believe you need to make a
25 specific ruling on those several CIPA issues.

1 We've then articulated what we believe you need
2 to rule on in terms of several other estoppel arguments.
3 Mr. Matasar mentioned one estoppel with respect to the
4 tax issue. Another estoppel argument in the sentencing
5 proceeding goes back to our arguments with respect to
6 the Exhibits 704 and 705, the receipts from al-Haramain
7 that contain the Al Rajhi Bank number 9889.

8 The government is asking the court to determine
9 that there is an obstruction of justice based on AHIF 2
10 and 3, the 188 and \$186,000 documents.

11 The government had within its power the ability
12 to subpoena the proof that we believe exists to confirm
13 what's on 704 and 705. They chose not to exercise their
14 power independently. When we requested a letter
15 rogatory and the assistance of the court and further
16 assistance of the government, they declined to do that.

17 They should then be estopped from doing what
18 they are doing now, which is saying that there was an
19 embezzlement of this \$21,000; that these AHIF 2 and 3s
20 are phony when the evidence that would prove that they
21 are not was in their power, and they chose not to get
22 it. So that's an estoppel ruling that we believe is
23 needed there.

24 The next legal issue we believe you need to
25 rule on involves the government's request, it would

1 seem, for this court to take a position contrary to the
2 position taken by the Executive Branch in 1999 and 2000
3 with respect to the nature of the conflict in Chechnya.
4 And Mr. Casey will go into this, so I'm just going to
5 touch on it in terms of what I believe you need to rule
6 on, and that is the distinction between terrorism and a
7 mujahideen fighting in a war.

8 We've pointed out the places in the transcript
9 where the government said this is not a case about
10 terrorism. We had testimony at a *Daubert* hearing. We
11 had testimony at the trial from Colonel Lang, from
12 Dr. Long, and from Evan Kohlmann that there's a
13 significant distinction between acts of terror and
14 warfare engaged in by mujahideen.

15 The government recognized in '99 and 2000, the
16 relevant time frame, what was taking place in Chechnya
17 was a war. The government's own exhibits that they
18 introduced were exhibits from the computer that they
19 seized that describe the activities of the mujahideen
20 entirely as warfare activities.

21 This court, under the cases we've cited, we
22 would respectfully submit, cannot trump the position
23 taken by the Executive ten years ago, that this was a
24 war involving indigenous Chechen forces, foreign forces
25 engaged in battle, particularly when the government

1 presents these videos showing the preparation for and
2 training for warfare.

3 Next, with respect to the guideline issues,
4 clearly there are the four that Mr. Cardani has
5 articulated. I will not mention tax or terrorism, but
6 with respect to sophisticated concealment and
7 obstruction, we have pointed out in our pleadings the
8 evidence on that point and why we believe the evidence
9 on that point makes it entirely inappropriate to assess
10 either of those enhancements. Openly and notoriously
11 going into one's own bank in Ashland, openly and
12 notoriously going into one's own bank in Saudi Arabia, I
13 mean it's most peculiar to say this case involves
14 offshore banking when the offshore bank is
15 Mr. al-But'he's own bank in Saudi Arabia. There just is
16 no concealment here of a sophisticated nature.

17 The same is true with respect to obstruction.
18 The one additional point that I would make is that on
19 that score, the government ignores the one piece of
20 direct evidence, and that is from Mr. Sui, that I signed
21 that document in the year 2000. And the receipts that
22 we have in 704 and 705, roughly \$187,000, essentially
23 match the AHIF 2 and 3 numbers.

24 We believe that you need to make a specific
25 ruling on the Rule 32 violation, the manner in which the

1 presentence report was put together, and each of the
2 paragraphs where we believe that comes in is set out in
3 our memo.

4 We also believe you'll need to rule on each of
5 the specific objections in our sentencing memo to all of
6 the paragraphs that are listed there.

7 On the legal fee issue, that is something this
8 court is familiar with in terms of the material that you
9 have, the sources of the money, and, you know, bail
10 money being posted by people, you know, unrelated to
11 Mr. Seda. It's not his money. Other money, the
12 questions that were presented to you to which the
13 government is not privy.

14 And we do ask Your Honor to rule on a request
15 for release pending appeal. And we also will be asking
16 for -- or do ask you for a recommendation for placement
17 in Sheridan camp if we do get to the point where you are
18 denying the motion for a new trial, denying the motion
19 for judgment of acquittal and imposing a sentence other
20 than the sentence we have requested, which is a sentence
21 to time served.

22 Now Mr. Casey will talk about the terrorism
23 enhancement in some more detail. Thank you, Judge.

24 THE COURT: Thank you. Mr. Casey.

25 MR. CASEY: Thank you, Your Honor. The

1 government's position on the terrorism enhancement
2 stands on what we used to call and probably still call
3 the shifting sands. Their position for sentencing
4 purposes in two very critical respects is fundamentally
5 at odds with their position at the trial.

6 At the trial they said, A, the El-Fiki money
7 cannot be traced to Chechnya. And, B, they said on at
8 least two occasions, explicitly and unequivocally, this
9 is not a terrorism case.

10 They were right at trial. They are wrong now.
11 But right or wrong, it's inconsistent, it's
12 irreconcilable, and they should be judicially estopped
13 for sentencing purposes to try to punish Mr. Sedaghaty
14 for something that, A, was not charged; or, B, was not
15 part -- an essential part of the case.

16 We are not, as we said in our sentencing memo,
17 blind to the fact that there is a Chechnya connection
18 here, but for purposes of imposing the terrorism
19 enhancement, the touchstone issue is the offense of
20 conviction, and the offense of conviction involved tax
21 fraud that occurred in October of 2001.

22 Yes, the government says that the tax fraud was
23 part of an overall conspiracy that dates back to the
24 actions that took place in March of 2000, 19 months
25 before. But for sentencing purposes, that is not the

1 question that has to be asked, respectfully.

2 Under 3A1.4, the terrorism enhancement, the
3 government must prove by clear and convincing evidence
4 that the offenses of conviction either involved or were
5 intended to promote a federal crime of terrorism.

6 Now, the government does not even argue that it
7 involved a federal crime of terrorism inasmuch as that
8 has been construed to mean that the act itself, not the
9 purpose behind it, the act itself must be a federal
10 crime of terrorism. The government's theory here has
11 been that the actions involved in the tax fraud counts
12 intended to promote a federal crime of terrorism. So a
13 federal crime of terrorism is defined -- I think it's 18
14 U.S.C. 2332b(g)(5), there is a whole list -- a very long
15 list of specific federal crimes that constitute federal
16 crimes of terrorism.

17 In this case, there have been fits and starts
18 in terms of the government's identification of what that
19 crime is. They started at 2332b, went to 2332c, and we
20 show that they don't apply. Now they're at 2332a,
21 providing material support. And of course as you know,
22 he wasn't charged with providing material support. He
23 doesn't have to be, I understand that in terms of
24 sentencing purposes, but the actions involved in the --
25 the intention to promote terrorism must be identified.

1 What were those actions? What is it about the tax fraud
2 that occurred in -- 19 months after the alleged
3 diversion of funds to the mujahideen that has a
4 terrorist connection that is intended to promote
5 terrorism?

6 There is no suggestion that at that time in
7 March of 2001 Mr. Sedaghaty was in the business of
8 facilitating financial transfers to the mujahideen or in
9 any way supporting mujahideen at that time.

10 So the -- that is the offense of conviction.
11 And basically what the government is saying is, well,
12 that tax fraud was intended to cover up the earlier
13 diversion of funds. Well, maybe, maybe not. But the
14 critical question is why was he trying to cover it up?
15 Was the purpose of covering it up to promote a federal
16 crime of terrorism? There is a logical gap there. I
17 don't see it. I don't see the connection.

18 I see what the government explained to the jury
19 as what that motivation was. And they were clear about
20 it. The motivation for the tax fraud, they told the
21 jury on several -- at several different points, which we
22 identified in our memorandum, was to cover himself from
23 tax sanctions, from civil sanctions, from criminal
24 sanctions from the IRS, to preserve a tax exemption,
25 which he would feel was in jeopardy.

1 That was -- if there was a coverup here, that
2 was the purpose. It was not to promote a federal crime
3 of terrorism.

4 With respect now to the organic crime of
5 terrorism that has lately -- and I mean very lately --
6 surfaced as the underpinning of their terrorism
7 enhancement claim, 2339A, that has to do with providing
8 material support for acts of terror or for terrorists.
9 And it does not apply to conventional acts of war.

10 I tried, in cross-examination today with
11 Mr. Ignatchenko, to get him to differentiate between war
12 and terror on one hand. That's a soft issue. It's hard
13 to translate in terms of back and forth questioning, but
14 we all know there is a difference. I mean, for him --
15 you know, one man's terror is another man's conventional
16 war.

17 It was really interesting to hear him testify
18 about that this morning. I'm sure it didn't escape your
19 ears, Your Honor, when he was saying time and again that
20 the acts of terror were those committed by the Chechens
21 in their war against Russia. So I asked him, well, what
22 about acts that were committed in those wars by Russia?
23 And he says propaganda. It's propaganda. Period. End
24 of case.

25 So I believe this court is in a position to

1 take judicial notice of U.N. resolutions cited in our
2 memo and so on. It is clear beyond cavil that world
3 condemnation came down resoundingly time and time again
4 against the Russian's barbaric acts in those wars in the
5 1990s precisely at the time that these events were
6 taking place, the late '90s, early 2000.

7 The U.N. condemned the bombing of Russia as the
8 worst example of human devastation recorded on earth.
9 They have condemned the Russians for one act of barbaric
10 cruelty after another in these wars against civilians.
11 They are still digging up the graves, the massive graves
12 in Chechnya, still today as we sit here they are doing
13 that of Chechens, Chechen civilians, by the Russians.

14 Now, do you think they weren't trained, don't
15 you think they have their own Kavkaz Institute? And
16 does it make a difference that these were for Russians
17 instead of for an international group? Does that make a
18 difference in the analysis? I don't think so. Again,
19 you can take judicial notice that the Russians in this
20 case, like the Americans, they are no different in this
21 sense, that they use allies, we train allies, we have
22 camps for allies, we have -- you know the United States'
23 camps in South America, Central America, for our allies
24 for counterinsurgencies. Where are these lines to be
25 drawn? The lines between war and terror are frankly --

1 one candid thing he did say, Ignatchenko -- are frankly
2 hard to define. The lines between trying to provide
3 humanitarian support and the lines between blankets and
4 bullets, humanitarian, for military, very, very
5 nebulous. The lines between indigenous insurgents,
6 foreign insurgents, very, very blurry.

7 What was not blurry? What came through
8 unequivocally in this testimony this morning was that
9 this man -- the man who was charged with knowing the
10 universe of information about financial contributions by
11 charities to what he called terrorism in the Caucasus,
12 this man has never heard of Pete Sedaghaty, has never
13 heard of Dr. El-Fiki, was not in a position, neither he
14 nor his agency was in a position to monitor or trace
15 this money, not just the mujahideen, but to Chechnya
16 period.

17 They can't segregate out the El-Fiki money. So
18 where is the evidence? The vouchers, the vouchers that
19 he talked about, they show -- on their face they show
20 al-Haramain expenses, purportedly al-Haramain vouchers,
21 but they are all dated well -- and he was trying to tie
22 it into al-Haramain support of the Kavkaz Institute,
23 they're all dated well before or well after Kavkaz
24 either opened or was still operating.

25 We are not indifferent to national concerns

1 here on national security, generally speaking, but I
2 have to say, I came into this case late, I don't know
3 whether that gives me any more of a perspective or not,
4 it was midstream, it was well on the way, this case has
5 never, to me, had a flavor of real terrorism. The -- I
6 look at this as dealing with -- we're dealing with a --
7 I won't say a small man, but I'll say a small player,
8 local player, and I can't speak for him on this, I'm
9 speaking for myself, he get in over his head with the
10 money, al-Haramain, if there is a lesson here, the
11 lesson is be careful who you do business with.

12 But it's vastly disproportionate, Your Honor,
13 and totally unfounded to try to tag him with every act,
14 horrific act of terror committed in the name of the
15 Chechen mujahideen or even by certain people within this
16 vast organization. This organization is vast. He's a
17 small player in this organization. It is -- I don't
18 want to overstate it, but it is inappropriate,
19 inappropriate in the extreme to try to associate him
20 with acts of terror going as far back as, you know,
21 early '90s and as far forward as today, 2010.

22 He is no more than responsible for every act of
23 Saudis in al-Haramain than Mr. Ignatchenko is
24 responsible for every act, many sordid acts, of his
25 organization, the KGB or FSB.

1 So, Your Honor, for all these reasons, legal,
2 factual, we ask that you not brand this man as a
3 terrorist, not enhance a sentence for this first time
4 offender, tax offender, to the extent that the terrorism
5 enhancement calls upon you to do.

6 Thank you.

7 MR. WAX: Your Honor, two brief legal points
8 before Mr. Matasar concludes, I neglected to include in
9 my list of points on which we need a ruling or statement
10 from the court, we articulate in our pleadings the
11 question of whether or not you ever reviewed the
12 material that we caused to be placed into the SCIF. It
13 is not clear from the record. And we believe the record
14 needs to be clear on that point whether you did or not.

15 The second point, just an additional aspect of
16 the estoppel argument --

17 THE COURT: Let me just stop you a second. You
18 are not indicating that material was submitted that I
19 didn't look at. You are saying it needs to be on the
20 record.

21 MR. WAX: We do not know whether you have ever
22 had access to the material that we provided and provided
23 under an agreement with the government with respect to
24 how and when it would be accessed. We do not know if
25 you personally reviewed that material. And we believe

1 that that does need to be on the record.

2 The next point that -- with respect to the
3 estoppel is to point out that the government introduces
4 as FSB 4 or 4 and 5 vouchers of al-Haramain that are
5 quite similar in appearance to the documents in 704 and
6 705 that they object to as being fraudulent. And we
7 believe, again, they should not be permitted to have it
8 both ways.

9 MR. MATASAR: Your Honor, concerning the tax
10 loss, it's remarkable that the government is here
11 scrambling at the last minute to claim a tax loss
12 because, of course, at trial, one of the main issues
13 they had to prove was materiality of this tax return,
14 which was a nonprofit tax return.

15 They said throughout the pretrial arguments,
16 from time to time in chambers, maybe on the record
17 during the trial, that there is no tax loss, but we have
18 to show materiality in a different way, we have to show
19 materiality by showing that it was an informational tax
20 return. We can show materiality for other reasons.
21 But, really, Your Honor, if they thought there was a tax
22 loss, that would have been a major part of the trial and
23 they would have proven materiality that way.

24 They came to this -- these arguments, one today
25 at the very last minute, literally the last possible

1 day, and the rest right before -- I'm sorry, after the
2 trial.

3 As far as the legal issues go, it's important,
4 and Mr. Cardani said both of these things, it's
5 important to remember on one hand that you can make a
6 reasonable determination of the tax loss, however, the
7 main issue is is there clear and convincing evidence
8 of -- that there is a tax loss, we feel there is not.

9 Mr. Owens' written statements go far beyond his
10 oral testimony. We ask that you rely on those. I think
11 the very direct, two-page one that he submitted at the
12 end, after having a chance to see the government's memo,
13 is definitely the clearest, simplest way of resolving
14 this, in which he says there is no foundation in the
15 federal tax law for a tax loss.

16 While Mr. Cardani's argument sought to make
17 Mr. Owens say that his argument was based totally on his
18 earmark theory that he raised in the trial, the
19 testimony of Mr. Owens was that it was not. He said
20 that even without that, we -- Mr. Cardani asked various
21 hypotheticals well after that, it's clear that under
22 either of the theories of the government there is no tax
23 loss. Either Mr. El-Fiki intended the money to go to
24 the Chechen mujahideen and it went there. In that case,
25 of course, there is no embezzlement. The only possible

1 claim they could make is that which they thought of
2 today, I guess, that it's some sort of -- would have
3 resulted in a loss of the tax exempt status to the
4 organization. However, of course, if that were the case
5 and they filed a corporate tax return, a gift that comes
6 into a corporation is not income. There is no tax on
7 that. And certainly there's no tax to Mr. Sedaghaty.

8 If Mr. El-Fiki intended it to go to the Chechen
9 widows and orphans, and this is an argument that we
10 believe the government cannot make given their trial
11 arguments, the case is still not an embezzlement under
12 their theory. Mr. Owens said that. This psychic
13 benefit that is the only thing they can really rely on
14 since there was no personal inurement, it's a tax term,
15 there was no personal use to Mr. Sedaghaty, simply
16 somewhere that he wanted the money to go is not
17 sufficient.

18 You heard Mr. Owens say that if somebody, for
19 example, gives money to a cause and wants them to change
20 the name of the organization, that's not the kind of
21 thing that would result in taxes.

22 Probably most importantly what Mr. Owens says
23 is that really the fact that something is bad is not
24 enough to make it taxable, to make a tax loss, even
25 under the government's hypothetical where the conduct

1 went somewhere -- where the money went somewhere where
2 it shouldn't go, that's not sufficient. *Bob Jones*
3 *University* and the other cases show that.

4 THE COURT: That's footnote 53 in his report.

5 MR. MATASAR: Pardon me?

6 THE COURT: It's footnote 53 in his report.

7 MR. MATASAR: Yeah. Which brings me, Your
8 Honor, to the videotape. I think really --

9 THE COURT: Do you want to show it again now?
10 That's fine.

11 MR. MATASAR: No, I don't.

12 THE COURT: There are two videos. Actually,
13 the other was a shorter one with CNN footage about
14 fighting --

15 MR. MATASAR: That's what I'm saying --

16 THE COURT: -- in the Caucasus and so on.

17 MR. MATASAR: -- we don't. The fact that not
18 only did you -- you told us you saw it, you articulated
19 the parts of it that I think are most important to us.

20 THE COURT: Standing next to lithia water --

21 MR. MATASAR: Correct --

22 THE COURT: -- being interviewed.

23 MR. MATASAR: Why we would show it would --

24 THE COURT: Have you ever drank lithia water?

25 MR. MATASAR: Why we would show it would be to

1 communicate its content to the court. The court has the
2 content. So we're not going to show it. We appreciate
3 your concern.

4 Let me just say a few words about Mr. Sedaghaty
5 before his wife and he address the court. Some -- much
6 of this there is no dispute about and it was in the
7 video and other places. He's a well-known community
8 person. His place in the community is unquestioned by
9 Mr. Cardani and others. He is the most well-known,
10 articulate spokesman for his faith in Southern Oregon.
11 And he is the kind of spokesman that is what we all
12 would want. He speaks for peace, for tolerance. He
13 speaks against Islamic leaders who are doing terrible
14 things to their own people. He speaks against Saddam
15 Hussein. He says terrorism is the opposite of what
16 Islam teaches. He talks about Islamic leaders who he
17 calls dictators who create an atmosphere of terror
18 within their countries, build their military, suppress
19 their own people.

20 Rabbi Zaslow explains in a letter that we
21 attached to the sentencing material as well as in the
22 release hearing that at personal cost to himself, he
23 speaks out in favor of Israel in his community. Not a
24 popular, perhaps, position, but he takes it, it's part
25 of his interfaith and peace beliefs.

1 Another thing that's interesting, Your Honor,
2 is that when he talks, he talks as an American. He
3 talks as an inside American, not as an outsider. He
4 tells people his views, his ideas are more acceptable
5 here than anywhere else on earth. This is the place
6 where he can talk, where he can speak. He talks about
7 after 9/11, the recording talks about those, he says
8 how -- talks about the pain and suffering of our people,
9 of what our nation is going through. At the end of the
10 video, he talks to a woman, a very upset Christian
11 woman, and eventually they reach an understanding
12 because of his ability to speak out for peace and
13 interfaith harmony.

14 He tells the people of Ashland on the
15 television that he hopes to God that we live to be
16 mature enough to come out of this dark, dark hole that
17 these people have thrown us into. And we share his
18 views on that.

19 We ask Your Honor that you recognize that the
20 world is different now than it was then. I understand
21 the role of deterrence in the law. I understand the
22 role of general deterrence, particularly here; however,
23 the conduct here, the money from El-Fiki, the purchase
24 essentially of a prayer house, that conduct occurred
25 before September 11th. That conduct is what's at issue

1 here. There is very little reason to deter people given
2 that this conduct occurred so long ago. There is no
3 real deterrence to punish him based on when these events
4 occurred.

5 We ask you to sentence him as a tax offender
6 under the guidelines and not as a terrorist. A case
7 where the government didn't charge terrorism, and where
8 the government's evidence of terrorism only comes from
9 information that it and its sophisticated analysts, such
10 as Evan Kohlmann, have developed in the post-9/11
11 period, he should be sentenced for the tax offense, not
12 for the terrorism enhancement.

13 He's a good man. He's done many good things.
14 The statute talks about what is necessary, that a
15 sentence greater than necessary is not required. We
16 believe our requested sentence of six months credit for
17 time served is sufficient under the statute, and that
18 nothing more is necessary.

19 So with that, we -- I see Mr. Gorder --

20 THE COURT: If there is a response on the
21 argument, I'll take that.

22 MR. GORDER: Yes, Your Honor, just briefly
23 before we get to the allocution.

24 With regard to the discovery motion concerning
25 getting additional material from Russia, we -- I just

1 want the record to be clear, we have provided the
2 defense with all the material that we received over a
3 year ago. And to argue that for the purposes of
4 discovery that there is some joint venture between the
5 FBI and the IRS and the Russian government is just
6 ludicrous. That's not the kind of joint venture that
7 the discovery cases talk about.

8 With regard to the use of Defense Exhibit 730,
9 ironically as a piece of circumstantial evidence in the
10 sentencing, I would just point out we're not suggesting
11 that we ignore -- or the court ignore Sami Al-Sanad's
12 claim that they were providing this money to -- for
13 humanitarian purposes. I'd just ask that you evaluate
14 that in light of who he said he was providing it to, Abu
15 Umar al-Sayf.

16 When you go through all the legalese on the
17 terrorism enhancement, where it really comes down to is
18 the terrorism enhancement applies if the defendant
19 intended to have this money go to the mujahideen in
20 Chechnya. And we started out this case by saying we
21 weren't taking sides between the Russians and the
22 Chechen separatists in that conflict, but that's not --
23 you know, the terrorism enhancement under the guidelines
24 does not say you get the enhancement if you intend to
25 promote a federal crime of terrorism unless you think

1 it's a war and you are supporting the side that you
2 support. It gives a very clear list of federal criminal
3 statutes, one of which is Title 18 United States Code
4 Section 956, which boils down to providing support in a
5 conflict in a country that we are at peace with.

6 And despite whatever criticism they can bring
7 up about the Russian government in the 1990s and in
8 early 2000 period, the United States was at peace with
9 Russia, and the statute applied and the terrorism
10 enhancement applies.

11 With regard to this judicial estoppel argument,
12 I think they are trying to mix apples and oranges here.
13 We were limited at the trial to admissible evidence. We
14 couldn't use Defense Exhibit 730 because it was hearsay.
15 But in the sentencing process, it's a piece of evidence
16 that the court can consider.

17 The purpose of the offenses that Mr. Sedaghaty
18 committed is not just that on October 15th he decided to
19 lie on a tax return. There was a conspiracy count that
20 he was also convicted of that went over several year
21 period. And if the purpose of those crimes was to
22 assist the al-Haramain organization in continuing to
23 fund the mujahideen in Chechnya, then it was intended to
24 promote a federal crime of terrorism.

25 The point of the testimony this morning I hope

1 that the court got is that the activities of al-Haramain
2 in Chechnya and in support of the Kavkaz Institute and
3 the Chechen mujahideen continued from 1997 through 2004.
4 And they needed to cover that up.

5 And you recall the exhibit in late September of
6 2001, when the accountant in Riyadh specifically told
7 Mr. Sedaghaty in an e-mail, make sure that there are no
8 trails. We've got to cover up what we're doing.

9 Finally, with regard to the tax loss issues, we
10 proffered a person who was working at the IRS today, who
11 is involved in auditing exempt organizations rather than
12 Mr. Owens who has been out of the game for ten years. I
13 think that we've met that burden.

14 THE COURT: Thank you. Anything more on the
15 arguments? If not, I'll take the allocution. If you
16 want to call the defendant's wife up, that's fine.

17 MR. CARDANI: While he's doing that, Judge, a
18 matter of housekeeping.

19 THE COURT: Yes.

20 MR. CARDANI: We offer all of the sentencing
21 exhibits. I'm not sure if I made a formal offer, but we
22 offer all of the sentencing exhibits which are attached
23 to our sentencing memo and redacted sentencing Exhibit 1
24 as well.

25 THE COURT: I know you offered many of them and

1 they were received, but any other objections that we
2 haven't heard?

3 MR. WAX: We've made the objections, and we
4 still have them, Your Honor.

5 THE COURT: Thank you. The exhibits are
6 received.

7 MR. CARDANI: Thank you. The only other matter
8 is I didn't know if the court wants to be heard on
9 arguments on release pending appeal but I do have --

10 THE COURT: Not at this time.

11 MR. CARDANI: Okay. But I do want to be heard
12 at some point.

13 THE COURT: If we have argument, we'll do it on
14 the date I actually impose the sentence.

15 MR. CARDANI: Thank you.

16 MR. MATASAR: Your Honor, Ms. Rife, Pete Seda's
17 wife, has asked to be able to sit down so I've given --

18 THE COURT: No, I think that's fine. Just make
19 sure, please, that you're near the microphone. And then
20 say your name. I need you to spell your name for our
21 record, please.

22 MS. RIFE: S-U-M-M-E-R, Rife, R-I-F-E.

23 THE COURT: Thank you. Go ahead.

24 MS. RIFE: I met Pete in early 2001 and have
25 gotten to know him very well since then. I worked and

1 lived in the al-Haramain Ashland prayer house for about
2 a year and a half. I was with Pete overseas. And I
3 came back to the U.S. with Pete and was involved in the
4 trial preparation phase of this case. I heard the
5 testimony at the trial. And I am aware of the opinions
6 and statements about Pete, that he has a private,
7 insidious side, that he is an extremist, and promotes
8 violence, that he is a con man who deceives, conspires
9 and conceals when it is to his benefit, and that he
10 intended to fund mujahideen in Chechnya.

11 For whatever it's worth, from my almost ten
12 years living with this man, Pete is not those things.
13 He doesn't have a private dark side. He does not
14 support extremism or terrorism.

15 In fact, he has spent a great deal of his life
16 openly opposing those things. When he was in Saudi
17 Arabia, he publicly spoke against terrorism, and
18 received threats to his personal safety for doing so.

19 Pete doesn't believe in giving money to further
20 fighting conflict. He would never knowingly do anything
21 that involved terrorism or was intended to promote
22 terrorism, never.

23 Pete believes in helping the victims of
24 conflict, the starving, the widows and orphans who have
25 lost everything.

1 One of Pete's dreams has always been to put
2 together a humanitarian aid truck convey and drive it
3 into refugee camps to relieve pain and suffering.

4 Pete is someone who lives and breathes to help
5 others, whether they be destitute widows and orphans in
6 Chechnya, elderly people without water in Ashland, or
7 the homeless on the streets of Portland, Pete is always
8 thinking of ways to help people. He isn't someone that
9 anyone in this room should be afraid of. And he isn't
10 someone we need to be protected from.

11 Last year when it snowed in Portland, Pete
12 spent the whole night driving around in his Suburban
13 pulling people out of the ditch. By the end of the
14 night, I think he pulled about 15 cars and a tow truck
15 back onto the road.

16 Barbur Boulevard, a main artery out of downtown
17 Portland, was at a standstill, and traffic was moving
18 excruciating slow. The problem was a TriMet bus that
19 had slid into the road so that it was blocking all but
20 one lane. When Pete drove up to the bus, the bus driver
21 had been just sitting in the bus all alone for hours.
22 Pete, being Pete, would never just leave like the rest
23 of us assuming that someone else would deal with it. He
24 worked the lady through how to drive the bus onto the
25 shoulder, which freed up traffic that had backed all the

1 way into downtown Portland.

2 I know Pete isn't perfect. His ideas tend to
3 be grandiose. He's not a detail guy. And over the
4 years, he associated with people who didn't hold the
5 same moderate views that he does. But Pete shouldn't be
6 punished for a phone call made by someone else in Saudi
7 Arabia, or the e-mails or translations done by people
8 Pete knew.

9 Everyone learns as they go. Pete and I have
10 discussed this. And one of the lessons Pete and I have
11 both learned through this experience is how important it
12 is to counter people who hold intolerant and extreme
13 views.

14 Before 9/11, I think Pete was more of a live-
15 and-let-live kind of guy. If some of the people around
16 him on occasion voiced a more extreme or intolerant view
17 than he himself might have held, he might not have
18 always thought it necessary to take a stand against or
19 counter that at the time.

20 In today's world, with the unique problems we
21 all face, I think what Pete and I have both learned is
22 that when you encounter someone who voices extreme
23 intolerant or violent opinions, it is very important to
24 not only counter it but to strongly and openly condemn
25 that type of thinking right then and there.

1 What has occurred in the last nine years has
2 been incredibly painful to him, to me, and to his
3 family. It has been devastating to a see a good man
4 broken by lies, innuendo, fear and hate.

5 While we have suffered tremendously, while I
6 feel something somewhere went terribly wrong, I do still
7 believe that in the end justice will prevail. I will
8 never let go of that hope. And I look forward to that
9 date.

10 THE COURT: Thank you very much.

11 Mr. Sedaghaty, have you read the presentence
12 report?

13 MR. MATASAR: Is it okay if he sits closer to
14 the mike?

15 MR. WAX: Judge, do you need him to stand?

16 THE COURT: He may or not, I don't care. I
17 want him to be heard, most of all, by the court
18 reporter, that's most important.

19 Have you read the presentence report?

20 THE DEFENDANT: Yes, I have.

21 THE COURT: And have you talked to your lawyers
22 about it?

23 THE DEFENDANT: Yes, I have.

24 THE COURT: Is there anything you would like to
25 tell me about what is in that report or do you have any

1 other statement that you would like me to consider in
2 imposing sentence in this case?

3 THE DEFENDANT: Nothing more than my counsel
4 have shared.

5 THE COURT: All right. Fine. Well --

6 MR. WAX: Your Honor, with respect to the
7 presentence report. He does have a statement that he
8 would like to make to you.

9 THE COURT: Well, that's fine. That's what I
10 would like, sir. Now is your chance to say something to
11 me about sentencing.

12 THE DEFENDANT: Your Honor, I have difficulty
13 reading, but I'll do my best. I can't really go off of
14 my head, I'm not very clear these days. It's a lot.

15 Thanks for giving me a chance to speak, Your
16 Honor. My faith instructs me to promote peace and
17 understanding and mercy. That is what I have dedicated
18 as a goal in life. I love to see that as a human
19 community, we can work out our problems and coexist in
20 peace.

21 I have tried my best to direct those goals
22 toward all people and the people of my faith, trying to
23 keep our eyes on the prize of coexistence and offer help
24 toward the poor as numerous efforts of my work has
25 shown.

1 I hope and pray that God will honor me to
2 dedicate my life to help the poor, the orphans, and the
3 needy. And I hope to be encouraged to continue that
4 work, to help with the understanding and peace, to make
5 this world a better and kinder place for the coming
6 generation.

7 In all my lectures and my writings, I
8 relentlessly promoted peace and coexistence. I rejected
9 terrorism all my life, and it is not compatible with my
10 faith and belief.

11 I have never or will ever allow any resource or
12 money in my control to pass to promote war or violence.
13 That is against my faith, as I always have said and
14 wrote.

15 I am ashamed of some statements in some of the
16 books that was distributed. They are not my words or
17 belief. They are clearly against my work in life. And
18 all my writing supports my intention for coexistence.
19 And I have been and always will dispel prejudice and
20 hatred.

21 Islam is a religion of peace, justice, and
22 mercy, forgiveness. It is my -- and it is misunderstood
23 and misrepresented.

24 Terrorism is and always was clearly rejected by
25 me and my faith. Terrorism can never be good, positive

1 or helpful.

2 I hope for the truth to be known, and I believe
3 that justice will be served. I pray that the court
4 allow me to move forward by learning from my past and my
5 mistakes to see an example for the world that is going
6 to be kinder and more compassionate place.

7 I hope that over the 20 years of my tireless
8 community volunteer work effort, like planting thousands
9 of trees around the city and the county, working and
10 teaching in schools, volunteering in city and county
11 parks, working for libraries, forest fire prevention
12 programs, emergency health, food for needy, homeless
13 food programs, and interfaith bridge building, while
14 being a relentless advocate for peace are taken into
15 account.

16 Justice, love, compassion, and mercy will
17 endure, even if it appears as darkness has enveloped us
18 all to extinguish the last flickers of light. It is a
19 light that we all have been gifted, a small kernel of
20 kindness toward the poor, the orphans and refugees.
21 Allow it to die or we are going to let it shine.

22 I hope that all people will join in making this
23 a world of tolerance, understanding, kindness, and
24 peace.

25 Thank you, Your Honor.

1 THE COURT: You are welcome.

2 Anything further at this time? All right.

3 Mr. Wax?

4 MR. WAX: No, thank you.

5 THE COURT: All right. I'm going to at this
6 point recess the sentencing for a date that I'll inform
7 you of. I don't have the date for you right now. We
8 are getting into a holiday season for some. And I
9 wonder if there are times that counsel -- that you are
10 just not available because you have family trips or
11 something like that. Are there -- if there are those,
12 would you please tell me.

13 MR. WAX: I know that I will be out of town
14 December 15, 16, and 17.

15 THE COURT: Okay.

16 MR. MATASAR: I'm available, Your Honor,
17 throughout.

18 THE COURT: Okay. That's it?

19 MR. CARDANI: This would be before the
20 Christmas season?

21 THE COURT: Yes. I expect it to be. Mr. Wax
22 has given me quite a few things -- and so have you --
23 that you've told me you would like findings on, so I'm
24 going to give them to you. I don't understand the one
25 request Mr. Wax has, frankly, but --

1 MR. CARDANI: In terms of availability, Your
2 Honor, we're all available right up until Christmas.

3 THE COURT: If you could explain that any
4 further, Mr. Wax, I'd be happy to hear it. Material
5 submitted to me, I certainly do my duty with regard to
6 that.

7 MR. MATASAR: Your Honor --

8 THE COURT: Just a moment.

9 (Discussion held off the record.)

10 THE COURT: Do you have anything more?

11 MR. WAX: Well, in answer to your question,
12 Your Honor, the only thing that I'm referring to is the
13 material that is the subject of the May 2008 order which
14 we had, as you recall -- and I'm trying to remember -- I
15 think everything I am about to say I can say in this
16 open setting -- we had caused to be placed in the SCIF
17 in Washington. And we had caused that to be placed in
18 the SCIF pursuant to an agreement that we had entered
19 into with the government.

20 I'm not referring to any of the discovery
21 materials that were provided by the government for the
22 court's review. I'm only referring to the one
23 material -- set of materials, documents, that I
24 cannot --

25 THE COURT: I'm going to have to confer with

1 the court security officer. I'm not even sure I can
2 answer your question, frankly.

3 MR. WAX: As you look at the -- look back at
4 the pleadings that we have filed with respect to that, I
5 believe that you will see that we have raised this
6 question at a number of points in the pleadings. And in
7 terms of an appellate process, if there is to be an
8 appellate process after the sentencing, that fact would
9 need to appear somewhere on the record for us to be able
10 to make arguments about the agreement that was entered
11 into with the government, and what it is that we can
12 say, recognizing that what we can say is limited by the
13 order which remains in place. So that's what I'm
14 referring to.

15 THE COURT: So you're -- well, okay. We're in
16 recess.

17 (The proceedings were concluded at 3:48 p.m.)
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1 CERTIFICATE

2 I, Deborah Wilhelm, Certified Shorthand Reporter
3 for the State of Oregon, do hereby certify that I was
4 present at and reported in machine shorthand the oral
5 proceedings had in the above-entitled matter. I hereby
6 certify that the foregoing is a true and correct
7 transcript, to the best of my skill and ability, dated
8 this 29th day of November, 2010.

9
10
11
12 /s/ Deborah Wilhelm

13 _____
14 Deborah Wilhelm, RPR
15 Certified Shorthand Reporter
16 Certificate No. 00-0363
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